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### 1. Kejriwal's arrest: allegations and defence

#### Why in News?

Mr. Kejriwal was arrested by Enforcement Directorate on March 21 after his plea for interim protection from arrest was rejected by the Delhi High Court, marking the first instance of a sitting Chief Minister being jailed.

#### What are the ED allegations against the Chief Minister?

The case arose from a report submitted by Delhi Chief Secretary Naresh Kumar to Lieutenant Governor (L-G) Vinai Kumar Saxena in July 2022 alleging that there were procedural lapses in the formulation of the Delhi Excise Policy 2021-22, which came into force in November 2021 but was later scrapped in July 2022.



The Chief Secretary alleged that kickbacks received by the Aam Admi Party (AAP) leaders from operators of alcohol businesses for preferential treatment were used to "influence" the 2022 Assembly elections in Punjab and Goa. Subsequently, the ED claimed that the scam involved giving wholesale liquor businesses to private entities with a fixed margin of 12% for a 6% kickback.

Contending that Mr. Kejriwal was the "kingpin and key conspirator" of the scam, the agency in its remand application said that the excise policy was drafted "considering the favours to be granted to the South Group", a group of influential persons from South India who purportedly secured undue favours to establish wholesale businesses and paid the political party ₹100 crore in return. On March 15, K. Kavitha, Bharat Rashtra Samithi leader was arrested for

allegedly being part of this group. After her arrest, the ED for the first time alleged that Mr. Kejriwal was also a conspirator in the case.

Others accused in the case include Raghav Magunta, Ongole MP Magunta Srinivasulu Reddy's son, and P. Sarath Chandra Reddy, the son of P.V. Ramprasad Reddy and co-founder of Hyderabad-based Aurobindo Pharma. Both later turned approvers in the case.

### **What is Kejriwal's defence?**

During the proceedings before the High Court, senior advocate Abhishek Manu Singhvi, appearing for Mr. Kejriwal, contended that his arrest was solely based on the statements made by accused persons who later turned approvers in the case. He further underscored that the ED had failed to rely on any independent evidence to corroborate these statements, as required by law.

Comparing such approvers to a "Trojan horse," Mr. Singhvi pointed out that the accused persons succeeded in securing bail only after turning approvers.

### **Can the ED implead AAP as an accused?**

The ED's claim that Mr. Kejriwal is "vicariously liable" for the offence of money laundering could result in AAP being subsequently impleaded as an accused in the case. In such a scenario, the ED could have the political party's assets attached or confiscated as per the provisions of the Prevention of Money Laundering Act, 2002 (PMLA). Vicarious liability is a legal principle that holds a person or entity responsible for the actions of others. It is based on the concept of agency which presumes that a person or entity has been authorised to act on behalf of another person or entity.

ED's argument stems from Mr. Kejriwal's role as the Chief Minister in the formulation of the liquor excise policy that purportedly generated "tainted funds" as proceeds of the crime. Further, his role as the convenor of AAP has been cited to explain his knowing participation in the alleged use of this laundered money in the Punjab and Goa Assembly elections. Similar arguments were raised during the bail hearings of former Delhi Deputy Chief Minister Manish Sisodia who is an accused in the case and is currently under judicial custody.

Section 70 of the PMLA which is often invoked to investigate companies stipulates that when an offence of money laundering is committed by a company, each individual who at the time of the crime was in charge or responsible, being a part of the entity conducting business, "shall be deemed guilty of the contravention and shall be liable to be proceeded against and punished accordingly." However, a person will not be prosecuted if they can prove that the contravention took place without their knowledge or that they had exercised all due diligence to prevent such contravention. Further, Explanation 2 of the provision clarifies that a company is a separate legal entity and can be prosecuted independently of its members or those who operate it.

Notably, the provision contains a crucial explanation that could bring a "political party" under the ambit of the anti-money laundering law by deeming it to be a "company" incorporated under the Companies Act, 2013. Explanation 1 defines "company" to mean "any body corporate and includes a firm or other association of individuals."

Since Section 29A of the Representation of the People Act, 1951, refers to a political party as “any association or body of individual citizens of India” — the phrase “association of individuals” under Section 70 of the PMLA could include within its ambit a political party. If AAP is named as an accused in the case, it will be the first instance of a political party being brought under the ambit of the PMLA.

### **What is the evidentiary value of an approver’s testimony?**

An approver is an accomplice who is directly or indirectly involved in the commission of an offence and has been granted a pardon by the court under Section 306 of the Code of Criminal Procedure, 1973, (CrPC) with a view to securing his testimony against other persons guilty of the offence. Once an accomplice turns into an approver, he acquires the status of a prosecution witness.

But an approver who deposes falsely can be tried again for the offence for which a pardon was granted as per Section 308 of the CrPC.

Courts over time have however warned that the testimony of an approver must be relied upon with utmost caution since it is prima facie of a tainted character. Additionally, illustration (b) of Section 114 of the Indian Evidence Act, 1872, stipulates that the court will presume that the testimony of an accomplice is unworthy of credit unless it is corroborated by material particulars.

### **Can money laundering be a standalone offence?**

While seeking Mr. Kejriwal’s remand, ED argued before a Delhi Court on March 22 that “one need not be an accused in the predicate offence to be an accused under PMLA.”

The essence of such an argument is that even if the Chief Minister has not been arrayed as an accused in the primary case, i.e. the Delhi excise policy case, he can be booked for the offence of money laundering with respect to the “proceeds of crime” derived from the case. This brings to the fore the debate of whether money laundering is a standalone offence or if it is extrinsically linked to a larger predicate offence.

The PMLA contains a list of scheduled offences which are also called predicate offences. In this case, the predicate offence that Mr. Kejriwal is to be tied to would be under the Prevention of Corruption Act, 1988. However, last year the Supreme Court clarified in Pavana Dibbur v. Enforcement Directorate that an accused in a PMLA case, who becomes involved after the commission of the scheduled offence by assisting in the concealment or use of proceeds of crime, need not be an accused in the scheduled offence.

The only requirement is that the the proceeds of crime that the accused has allegedly concealed or possessed must simply be linked to the scheduled offence.

In this case, only after the conclusion of the trial in the excise scam can it be determined if Mr. Kejriwal has laundered the money that forms the proceeds of the crime.

### **Is non-cooperation with ED summons a ground for arrest?**

Before being taken into custody, Mr. Kejriwal had ignored nine summons issued by the ED claiming that they were illegal. His counsel however argued that non-cooperation cannot be a ground for arrest since it will be hit by the fundamental right against self-incrimination.

Last year, a Supreme Court bench of Justices A.S. Bopanna and P.V. Sanjay Kumar in *Pankaj Bansal v. Union of India* underscored that a person could not be arrested by the ED for mere non-cooperation in response to summons issued under Section 50 of the PMLA. Addressing contentions of the ED that the responses given by the accused were "evasive" in nature, the Court pointed out, "In any event, it is not open to the ED to expect an admission of guilt from the person summoned for interrogation and assert that anything short of such admission would be an 'evasive reply.'"

Relevance: GS Prelims & Mains Paper II; Governance

Source: The Hindu

## 2. What is 'Havana syndrome', linked to a Russian intelligence unit?

### Why in News?

The Kremlin recently dismissed a joint media investigation which found evidence that a Russian military intelligence unit might be responsible for the mysterious health condition known as 'Havana syndrome' that affected US diplomats and spies across the world.

### But first, what is Havana syndrome?

Havana syndrome refers to a set of mental health symptoms that are said to be experienced by United States intelligence and embassy officials in various countries. Generally, the word 'syndrome' simply means a set of symptoms. It does not mean a unique medical condition, but rather a set of symptoms that are usually experienced together whose origins may be difficult to confirm.

Havana syndrome typically involves symptoms such as hearing certain sounds without any outside noise, nausea, vertigo and headaches, memory loss, and balance issues.

As the name suggests, it traces its roots to Cuba (Havana is capital of Cuba) in late 2016. This was about a year after the US opened its embassy in the capital city of Havana after ties between the two countries were normalised in 2015. Some US intelligence officials and members of the staff at the embassy began experiencing sudden bursts of pressure in their brains followed by persistent headaches, feelings of disorientation and insomnia.

### What did the investigation find?

The investigation claims that members of a Russian military intelligence unit, called 29155, could have targeted the brains of US officials by using "directed energy" weapons. The 29155 unit, which has been operational for more than a decade, has been previously accused of carrying out foreign assassination, subversion, and sabotage.

### Where has Havana syndrome been reported?

Since the Cuban incident, American intelligence and foreign affairs officials posted in various countries have reported symptoms of the syndrome.

## What is Havana syndrome?

The medical mystery named for the Cuban city where U.S. diplomats first experienced sudden, debilitating symptoms in 2016 has been reported by Americans serving in several other countries.

Acute symptoms (often occurring suddenly) may include:

Loud sounds (sometimes described as chirping, clicking or screeching) and pain in one or both ears; many felt the sensations came from a particular direction or were felt when in a specific location

Tinnitus, hearing loss

Intense pressure or vibration inside the head

Difficulty with memory or concentration

Visual disturbances

Nausea

Unsteady gait, loss of balance, vertigo/dizziness

Chronic symptoms (can last weeks, months or longer) may include:

Headache

Impaired concentration, memory loss

Insomnia

Depression

Impaired balance

No definitive cause has been found, but scientific studies have noted many of the acute symptoms are consistent with exposure to directed radio frequency (RF) energy. One theory posits the use of RF energy by a U.S. adversary as a weapon or a tool of espionage.

Source: National Academy of Sciences

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According to US media reports, in the past few years, its officials have reported more than 130 such experiences across the world including at Moscow in Russia, Poland, Georgia, Taiwan, Colombia, Kyrgyzstan, Uzbekistan, and Austria, among others.

A New York Times report from 2021 said US Vice-President Kamala Harris was delayed for three hours as she was about to fly to Hanoi, Vietnam, after a US official in Vietnam reported the symptoms.

In India, the first such case was reported in the same year, when a US intelligence officer travelling to New Delhi with CIA director William Burns reported symptoms of Havana Syndrome.

### What are the causes of Havana syndrome?

No one is sure. After the Havana incident, there was a suspicion that the syndrome was a "sonic attack", which was carried out by Cuba — a country that had been hostile to the US for over five decades.

However, further study by scientists in the US and medical examination of the victims began to suggest that they may have been subjected to high-powered microwaves that either damaged or interfered with the nervous system. It was said to have built pressure inside the brain that generated the feeling of a sound being heard.

Relevance: GS Prelims & Mains Paper II; Bilateral Relations

Source: Indian Express

### 3. Why Supreme Court barred unregulated soil extraction for linear projects

#### Why in News?



The Supreme Court has set aside a notification issued by the Environment Ministry three years ago that exempted extraction of ordinary earth for linear projects, such as road and railways construction, from obtaining Environmental Clearance (EC).

The exemption, offered in March 2020, was challenged before the National Green Tribunal (NGT), which asked the Ministry in October 2020 to review it within three months. As the Ministry dragged its feet, the matter reached the top court, which on March 21 this year struck down the “blanket” and “arbitrary” exemption.

### **The 2020 exemption**

In September 2006, the Environment Ministry had issued a notification under The Environment (Protection) Act, 1986, on activities that would require prior EC. In January 2016, a second notification was issued, exempting certain categories of projects from this requirement.

The third notification of March 2020 added “Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc” to the list of exempted activities.

The Centre argued before the NGT that the exemption was necessary “for the aid of general public”. It also said that grant of exemption was a policy matter that did not warrant judicial interference.

### **Grounds for challenge**

The exemption was challenged before the NGT on the ground that allowing the extraction of earth indiscriminately was arbitrary and violative of Article 14 of the Constitution of India. The petitioner argued that the exemption violated the requirement of prior EC in the leases as laid down by the top court in Deepak Kumar versus the State of Haryana (2012).

It was submitted that the Ministry had circumvented the legal procedure of inviting public objections before issuing the 2020 notification by wrongly exercising its powers to do away with such requirements “under the garb of ‘public interest’ during the Covid-19 national lockdown...to serve and further the interest of private miners and contractors”.

In October 2020, the NGT held that the Ministry “should strike a balance and instead of being a blanket exemption, it needs to be hedged by appropriate safeguards such as the process of excavation and quantum”. The Tribunal asked the Centre to “revisit” the notification within three months.

### **What the SC said**

The court held that “completely unguided and blanket exemption” was arbitrary and violative of Article 14 because the 2020 notification did not define ‘linear projects’ or specify the quantum and the extraction area.

Also, even the August 2023 notification, the court said, failed to elaborate on the concept of linear projects, specify the authority responsible for environmental safeguards or provisions for the same, or impose restrictions on the quantum of extraction.

### **Not the first time**

Similar exemptions under the EP Act have come under judicial scrutiny in the past.

\* In January 2018, the NGT quashed an exemption offered by the Ministry's 2016 notification from the requirement of prior EC for building and construction activities having built-up areas of more than 20,000 sq m. There was nothing to suggest an improvement in the quality of the environment to justify the exemption, the Tribunal observed.

\* On March 6, the Kerala High Court quashed a 2014 notification that exempted educational institutions and industrial sheds with built-up areas of more than 20,000 sq m from obtaining EC.

Relevance: GS Prelims & Mains Paper II; Governance

Source: The Indian express

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