IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19864 of 2014

Arising Out of PS.Case No. -6 Year- 2014 Thana -ECONOMIC OFFENCES, BIHAR District- PATNA

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1. Sunil Kumar S/o Sri Hari Prasad, Jr. Engineer, Bihar State Bridge Construction Corporation Ltd., resident of Godawari Chuna Bhatta, P.S- Civil Line, Distt- Gaya, Presently residing at Flat no. 501, Parwati Palace, Sidharth Nagar, Jagdeo Path, P.S- Rupaspur, Distt- Patna.

.... Petitioner/s

Versus

1. The State of Bihar Through Economic offence Unit, Bihar, Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Hemant Kumar-Advocate

For the E.O.U. : Mr. V.M.P. Sinha-Sr. Advocate
Mr/s. Soni Srivastava-Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV ORDER

10 7 -07-2015 On an allegation of accumulation of assets disproportionate to income of the petitioner led to institution of instant case detailing the list of the properties movable and immovable.

2. It has been submitted on behalf of petitioner that institution of instant case happens to be misconceived. To support the same, it has been submitted that before joining of service on 17.04.1991, petitioner was engaged in dairy business as well as transport business by way of purchase of truck bearing no.BHB-6171 which, after joining of service, was entrusted to his wife Lalita Yadav, who out of income of aforesaid business, made development time to time and had purchased the property in her

name coupled with the fact that after sale of truck bearing registration no.BHB-6171, she again purchased trucks in order to expand her business, which she had shown by way of filing of Income Tax Return since the Year 1994-95. In likewise manner, it has also been submitted that Safari Vehicle as well as Hero Honda Passion Motorcycle belongs to Deep Shree Properties Private Limited of which petitioner's wife and father are the Directors. Petitioner possesses only one Royal Enfield Motorcycle. Furthermore, it has also been submitted that petitioner had also informed his department regarding the property purchased by his wife in the Year 2010.

3. In likewise manner, it has also been submitted that father of petitioner was also engaged in transport business on account of having truck bearing registration no.BRM-6393 as well as also earning from agriculture and then thereafter, developed transport business by having two trucks subsequently purchased in the Year 1998 under hypothecation bearing registration no.BR-1G-2098, 4098. It has also been disclosed that father of petitioner initiated hotel business in the Year 1999, name and style of Hotel Tathagat Private Limited having been registered under Company Act without any his concern after borrowing loan.

4. It has further been disclosed that mother of

petitioner namely Parvati Devi, who had purchased a piece of land at Bodh Gaya in 1975 for a consideration amount of Rs.3,000/-, sold the same in the year 2008 for a consideration money of Rs.72,00,000/- whereupon paid Income Tax appertaining to Rs.14,40,000/- and further, she gave Rs.58,00,000/- to his wife for doing business. In likewise manner, petitioner had detailed construction of Apartment and earning after sale of the flats.

5. It has also been disclosed that petitioner’s wife took loan against M/s Hotel Tathagat Limited at different stages, out of which some part repaid while one crore still exists. In likewise manner, also took loan at different stages against Deep Shree Property Private Limited and still one crore survives and on account thereof, calculating all the existing loan, it come to six crore.

6. Then thereafter, it has been submitted that up-till March, 2014, the check period, petitioner had earned Rs.38,28,930/- as salary, Rs.504200/- against Maturity of L.I.C. Bond, Rs.1740/-, from bonus relating to bond of L & T detailing Rs.43,34,870/-, out of which L.I.C. Premium to the extent of Rs.15,3,405/-, bullet motorcycle Rs.1,67,110/-, camera Rs.16,990/-, share of L & T Company Rs.20,000/-, share in Deep Shree Property of Rs.20,000/-, P.P.F. Account in Post Office

appertaining to Rs.4,77,828/- is the items of expenses. It has also been pleaded that no movable and immovable property has been purchased out of the salary. It has further been submitted that petitioner is entitled to have 2/3rd savings against the earned salary which goes to Rs.28,89,913/- against which the total expenses come Rs.22,05,333/-.

7. Consequent thereupon, it has been submitted that no case for amassing the property disproportionate to known sources is made out. In likewise manner, it has also been submitted that the properties having been purchased and cared by father as well as wife of petitioner should not have been tagged with the petitioner and excluding the same, residuary did not justify initiation of the instant petition. Furthermore, with regard to the properties having in name of father as well as wife of petitioner, they all are well explained as well as are properly cared by way of filing return, statement before the Income Tax Department.

8. It has also been submitted that Rule-19 of Bihar Government Servants' Conduct Rules also takes care on this score, more particularly, the circular issued vide Memo no.3/RI-108/76A-21734 dated 15.11.1976. So, submitted that in any view of the matter, the case of the prosecution is found not at all

substantiated. Hence, petitioner should be released on anticipatory bail. Furthermore, apart from explaining under main petition, has detailed the same under supplementary affidavit, more particularly under Annexure-5.

9. On the other hand, learned Special Public Prosecutor representing vigilance has submitted that petitioner has very cunningly advanced such plea, which is found completely belied with from own conduct of the petitioner. In order to support the same, it has been submitted that there happens to be no dispute with regard to acquisition of the property as detailed. Therefore, acquisition of movable and immovable property right from 1998 as well as presence of cash under different account, L.I.C. Policy, vehicle became out of controversy. Now, the situation is to be perceived. According to own disclosure, petitioner got employment and joined on 17.04.1991. He had further disclosed the event before his joining on 17.04.1991 regarding running of dairy firm as well as transport business. There happens to be no corroborative document to show that petitioner was carrying dairy business and in likewise manner, transport business. Furthermore, the aforesaid situation continued up-till Year 1994-95 when for the first time Income Tax Return was filed on behalf of wife of the petitioner. Apart from this, from Paragraph-8 of the petition, it is

evident that petitioner used to inform his department in the year 2010 and onward. Furthermore, petitioner is silent with regard to non-informing the department before Year 2010. Apart from this, it has also been submitted that the petitioner had not pleaded that the loan burdened by the wife of the petitioner was for purchase of movable as well as immovable property. Furthermore, the circular so referred by the petitioner relating to Rule-19 of Bihar Government Servants' Conduct Rules has got no application in the background of the fact that the assets so accumulated and shown to be that of petitioner, could not be substantiated properly to be either self-acquisitioned of wife, father of the petitioner in the background of absence of relevant document justifying the submission with regard to running of dairy as well as transport business by the petitioner which he handed over to his wife after joining. Learned counsel also drew attention towards Paragraph-16 of the main petition wherein, it has been incorporated that wife of petitioner started business in the year 1995 and for that, she had not disclosed the capital amount in hand along with its source while from Paragraph-4 as well as Paragraph-25 of Annexure-5, it is apparent that she (wife) began her business from the year 1991, after having the assets given by him. At this moment also, petitioner failed to disclose the cash in hand (capital amount).

10. It has also been submitted that manner of acquisition should be in ratio of capital amount and its growth. Furthermore, before 1991, the income tax slab was such, which could not have allowed the petitioner to purchase a truck borrowing loan of Rs.4,00,000/- as well as adding on its own including earning from dairy, without paying income tax and that is the reason behind concealment of discloser regarding the capital, which as pleaded, was handed over by the petitioner to his wife as well as his father, having based upon his independent earning. In absence thereof, as the acquisition happen to be after 1991, date of joining of petitioner, hence could very well be said to be the acquisition made by the petitioner in it heir name and for that petitioner has rightly been taken cared of.

11. Accordingly, prayer of petitioner for anticipatory bail is rejected. Stay is vacated.

(Aditya Kumar Trivedi, J)

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