IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32441 of 2014

Arising Out of PS.Case No. -14 Year- 2014 Thana -ECONOMIC OFFENCES, BIHAR District- PATNA

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1. Shukdeo Ojha S/o late Madan Ojha village Khabra, P.S. Sadar, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. the Inspector General of Police, Economic Offence.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vijay Kumar Singh

For the Opposite Party/s : Mr. Rana Randhir Singh(App)

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

ORAL ORDER

10 09-07-2015 Heard Shri Bibhuti Pandey, learned senior counsel appearing on behalf of the petitioner who seeks pre-arrest bail under Section 438 Cr.P.C. in Economic Offence P.S. Case No.14 of 2014 under Sections 13(2) read with 13(i)(e) of the Prevention of Corruption Act, 1988.

The petitioner is a retired Head-clerk in the office of the Civil Surgeon-cum-Chief Medical Officer, Muzaffarpur and as appears from the FIR, he was possessed of properties disproportionate to his known sources of income. As per the allegation, the police had assessed the disproportionate asset of the petitioner standing at Rs.1,36,15,736/-. The assessment which was done by the police has taken into account the individual income of all the family members of the petitioner and has further considered the assessment returns which had been filed by them individually before the tax assessing authorities. It has also considered the acquisition of immovable properties at different places in or around Muzaffarpur and, thereafter, giving lawful discounts on running the family, bearing the expenses for educating the children as also on other legal obligations, like, getting the children married, the assessment was finally made.

The submission of Shri Bibhuti Pandey, learned senior counsel appearing on behalf of the petitioner was that there was no name as to who had indeed filed the report. It was, as such, submitted that there appears some moving mind behind the mischief of getting the case instituted in order to feeding fat the grudges that unknown person could be entertaining against the petitioner. It was next contended that before the institution of the present case, the Vigilance Bureau of the Government of Bihar had entered into preliminary investigation twice and had reported that the petitioner was not possessed of any property disproportionately to his known sources of income. Submission also was that assessment returns which have been admitted filed by all the family members including this petitioner and the savings from their individual earnings were the resources which had been used to finance different acquisition. On these contentions, it was pleaded that this Court should extend the benefit of Section 438 Cr.P.C. to the petitioner.

Shri Akhileshwar Prasad Singh, learned senior counsel appearing on behalf of the Economic Offences Unit of the State of Bihar has resisted the above submissions and has submitted that the calculations were perfect and allowances as required under law were given by the Economic Offences Unit to the petitioner. It was further submitted that it was not necessary that any particular name should come out as the informant of the case. The police may on its own motion drawn up the FIR and enter into an investigation.

Some legal issues have been raised by Shri Pandey, the learned senior counsel appearing on behalf of the petitioner, like, whether it was incumbent that some one should file a report so as to initiating a criminal prosecution and further whether repeated preliminary investigations could be foreclosing all future avenues of initiating a fresh investigation. The Court could refer to the initial words of Section 157 Cr.P.C. which itself answers the submissions of Shri Pandey that on information or otherwise and even on suspicion, the police could enter into investigation if it has suspected the commission of some cognizable offence. What is required under law is that even the police must immediately after it had verified its information or had tested its suspicion and had found real reasons for entering finally into the investigation, must draw up the FIR. It is this plank of reasoning based on the language of Section 157 Cr.P.C. that the Privy Council in the case of the Khawaja Nazir Ahmad (AIR 1945 PC 18) has stated that in certain exigencies, the police could very well start investigation and after it had collected some material to satisfy itself about the commission of the offence, it must register the FIR immediately thereafter. If the police could act merely on suspicion, then indeed there may not be a person coming forward to lodge a report as generally happens in cases which are registered under Section 154 Cr.P.C.

So far as the second limb of contention of the learned senior counsel is concerned, there could be many preliminary investigations in a case. That option does not appear not available to the police. This reasoning is best supported by the very statutory provision contained in Section 173(8) Cr.P.C. which permits further investigation in a case where the police had finally investigated the matter and closed the investigation by submitting the final form. If the police happened to tumble over any fresh material which could be required to be placed before the trial

Court, then there is no bar that it could not do it. Writing the judgment in the case of Papiya Ghosh murder case reported in 2010 (3) PLJR 427, I had myself, sitting in the Division Bench, pointed out that even during trial of the case, the police could be very well collecting further materials and place the same before the trial Judge. There was no legal bar to further investigation at any stage. As such, multiple further investigation or preliminary enquiries could not be said to be an ante-thesis to the scheme of investigation as contained in the Cr.P.C. I have already referred in that connection to Section 173(8) Cr.P.C.

I again refer to a judgment rendered by me in Shiv Shanker Verma & Ors. v. State of Bihar reported in 2011(3) PLJR 813 wherein I was answering a similar contention of filing returns of income by the accused person. During that course, I had noted that illegally amassed properties are also income and they are also equally subject to income tax assessment. As such, the filing of income tax returns do not really sanctify the illegally amassed asset of an accused.

It is true that the case is under investigation but considering the nature of allegation in the light of background of the case, I am not inclined to direct the release of the above named petitioner on anticipatory bail. Let him surrender before Special

Judge, Vigilance (North Bihar), Muzaffarpur in connection Economic Offence P.S. Case No.14 of 2014.

Petition is dismissed.

Let him surrender and pray for regular bail and the court below shall not be prejudiced by any order of rejection under Section 438 Cr.P.C.

(Dharnidhar Jha, J)

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