IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36931 of 2016

Arising Out of PS.Case No. -2 Year- 2015 Thana -GOVERNMENT OFFICIAL COMP. District- PATNA

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1. Bindi Devi, wife of Shri Mantu Yadav @ Raj Kumar Yadav, resident of Chiraiyatar, P.S. Rampur, District Gaya, Bihar.

.... Petitioner/s

Versus

1. The Union of India represented through The Assistant Director, Directorate of Enforcement (Prevention of Money Laundering Act), Government of India, 1st Floor, Chandpura Place, Bank Road, West Gandhi Maidan Patna-800 001, Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mrigank Mauli, Advocate
Mr. Samir Kumar, Advocate
Mr. Prince Kumar Mishra, Advocate

For the Opposite Party/s : Mr. S. D. Sanjay, Addl. Solicitor General
Mr. Anshuman Singh, CGC

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL ORDER

8/ 28-02-2017 The Petitioner apprehends her arrest in Special Trial No. (PMLA) 02 of 2015 instituted under Section 45 of the Prevention of Money Laundering Act, 2002, for commission of offences under Section 3, punishable under Section 4 of the Prevention of Money Laundering Act, 2002, pending before the Sessions Judge-cum-Special Judge (PMLA), Patna.

As per the complaint filed by the Assistant Director, Directorate of Enforcement, (Prevention of Money Laundering Act, 2002), addressed to the Sessions Judge-cum-Special Judge (PMLA), Patna the husband of this petitioner, namely, Mantu Yadav @ Raj Kumar Yadav, is a habitual criminal and around eleven cases are registered against him. Out of such cases, the complainant has highlighted three cases in the Complaint Petition, wherein, charge-sheet have been filed by the police. It is alleged that under the provision of Prevention of Money Laundering Act, 2002, (hereinafter to be referred as “Act”), investigation started against the husband of this petitioner and others and during investigation it was found that ill gotten money acquired by the husband of the petitioner was invested by him in the form of movable or immovable properties in his name or in the name of his wife Smt. Bindi Devi (petitioner). The movable or immovable properties, so acquired, is proceeds of crime in terms of Section 2(1)(u) of the Act. The investigation conducted by the Enforcement Directorate revealed that total ₹9,26,55,599/- acquired by the accused no.1-Mantu Yadav @ Raj Kumar Yadav has been invested in the form of movable or immovable properties at Gaya, Dehradun in his own name and in the name of his wife, Bindi Devi, from the earning which was generated by way of illegal means. The details of the properties acquired by the husband of the petitioner in his name and in the name of his wife has been elaborated in the complaint petition. The investigation further revealed that accused No.1 acquired commercial complex known as Bindi Market, Sikaria More, P.S.-Chandauti, Gaya, from the proceeds of the crime. The investigations further revealed that total assets in the form of movable or immovable, to the extent of ₹9,26,55,599/-, was acquired in the name of Mantu Yadav @ Raj Kumar Yadav and Bindi Devi (petitioner).

The petitioner in course of her statement dated 24.10.2013 under Section 50 of the Act, submitted acknowledgement of Income Tax Return filed in her name for the assessment year 1998-99 to 2009-10 and 2011-12 and 2012-13. The acknowledgement of Income Tax Return for the assessment year 2010-11 was not submitted by her. Similarly, the petitioner did not submit the acknowledgment of Income Tax Return or copy of Income Tax Return of her husband, Mantu Yadav, for the assessment year 2010-11. In course of investigation, it was found that Income Tax Return for the assessment year 2009-10 filed in the name of Mantu Yadav, as submitted by this petitioner in course of statement under Section 50 of the Act, was fictitious. Out of total income of ₹46,92,600/-, income to the extent of ₹10,80,500/- (assessment year 2009-10) was found to be fictitious as no Income Tax Return was submitted by Sri Mantu Yadav.

The claim of total gross income of ₹38,80,564/- submitted by Bindi Devi (petitioner) during assessment year 1998-99 to 2012-13 was found to be false during the investigation.

The investigation further revealed that the documents submitted by this petitioner by letter dated 09.12.2013 and 07.01.2014 were fictitious and the same had been fabricated/ created after initiation of the investigation in an attempt to falsely justify the acquisition of the properties. It is further alleged that the properties acquired in the name of Bindi Devi (petitioner) and others by Mantu Yadav @ Raj Kumar Yadav out of illegal money generated by the commission of the scheduled offences is an attempt to project it as untainted and, therefore, those properties were attached provisionally under Section 5(1) of the Act. The petitioner was found directly involved herself in the process connected with the proceeds of crime amounting to ₹34,62,418/- as she has been found knowingly assisting Mantu Yadav @ Raj Kumar Yadav @ Raj Kumar and knowingly became a party to transaction connected with the proceeds of crime by holding part of the proceeds of crime in her own name and projecting it as untainted property and hence, committed offence under Section 4 of the Act.

Heard Mr. Mrigank Mauli, learned counsel for the petitioner and Mr. S. D. Sanjay, learned Additional Solicitor General, for the Opposite Party.

It has been submitted on behalf of the petitioner that accused Mantu Yadav has been acquitted in two cases: (i) charge-sheet bearing No.206 of 2006 and (ii) charge-sheet bearing No.254 of 2012 and one case bearing charge-sheet No.245 of 2012 is pending for evidence. Evidence of witnesses in that case is about to be concluded. The accused No.1 Mantu Yadav having been acquitted in two criminal cases and one case almost on the brink of disposal, the very foundation of scheduled offences has vanished. It has further been submitted that commercial complex known as "Bindi Market" was purchased between July, 1998 to May, 1999, prior to coming into force of the Act and also prior to the date of commission of the scheduled offences. Construction of the said complex was started in the year 1999 after getting the plan sanctioned from the concerned authority on 10.07.1999. It is further submitted that petitioner is entitled for bail in view of first proviso of Section 45 of the Act as she is a woman.

In reply, counsel for the Union of India has submitted that the petitioner has not come with clean hands before this Court. She has submitted forged Income Tax Returns, during investigation, in course of statement dated 24.10.2013 under Section 50 of the Act. It has further been submitted that in terms of Section 24 of the Act, burden of proof in respect of acquisition of property from licit source is upon the accused under the Act. The scheduled offences and the offence under the Act are two distinct and separate offences. The petitioner is directly involved in the process and the activities connected with the proceeds of crime as properties have been acquired in the name of the petitioner by her husband from the proceeds of crime. The petitioner has committed the offence of money laundering as defined under Section 3 of the Act because in course of her statement dated 24.10.2013 under Section 50 of the Act, she projected the property as untainted, which has been acquired in her name by her husband from the proceeds of the crime. The burden of proof in terms of Section 24 of the Act for the acquisition of the property is upon the petitioner and her husband.

Section 3 of the Act clearly speaks that whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money-laundering.

In the instant case, from the Complaint Petition itself, it appears that the husband of this petitioner has purchased various properties in her name from the proceeds of the crime, which this petitioner tried to justify in course of her statement dated 24.10.2013 under the Act. She also submitted forged Income Tax Return during investigation in course of her statement under Section 50 of the Act. During investigation, the properties acquired in her name were found to have been acquired from illicit source and the petitioner has been charged with the offence under Section 3 of the Act.

In terms of Section 24 of the Act, burden of proof is upon the petitioner to substantiate her licit source for acquiring the properties in her name. From the plain reading of Section 3 of the Act, it is apparent that the scheduled offences and the offence under the Act are two distinct and separate offences.

In the aforesaid facts and circumstances of the case, this Court does not find it a fit case for grant of anticipatory bail.

Prayer is rejected.

The petitioner may surrender before the Court below and seek regular bail, which shall be considered and disposed of on its own merit without being prejudiced by this order.

(Sanjay Priya, J)

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