

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 14518 of 2015

Arising Out of PS.Case No. -1 Year- 2012 Thana -GOVERNMENT OFFICIAL COMP. District-
PATNA

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Shri Rit Lal Rai @ Ritlal Yadav @ Ritlal Ray @ Ritlal Prasad Singh, S/o Sri
Ramashish Rai, Resident of Kothwan, P.S. Khagaul, District- Patna.

.... Petitioner/s

Versus

1. The Union of India through the Department of Revenue Directorate of
Inforcement Patna.
2. The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Yogesh Chandra Verma, Sr. Advocate Mr. Ghanshyam Tiwary and Ms. Shama Sinha, Advocates
For the Opposite Party/s	:	Mr. S. D. Sanjay, A.S.G. Mr. Manoj Kumar Singh, C.G.C.
For the State	:	Mr. Md. Arif, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 21-02-2018

Heard Mr. Yogesh Chandra Verma, learned Senior
Counsel along with Mr. Ghanshyam Tiwary, learned counsel for the
petitioner; Mr. S.D. Sanjay, learned Additional Solicitor General
along with Mr. Manoj Kumar Singh, learned Central Government
Counsel, and Mr. Md. Arif, learned Additional Public Prosecutor, for
the State.



2. The present order has to be read in continuity with the orders recorded on 03.01.2018, 24.01.2018, 31.01.2018 and 07.02.2018. For the sake of convenience, the relevant portions of the same are reproduced hereinbelow so that the present order becomes a composite order in the case.

03.01.2018

“Heard Mr. Yogesh Chand Verma, learned senior counsel along with Mr. Ghanshyam Tiwari, learned counsel for the petitioner; Mr. Manoj Kumar Singh, learned C.G.C. for the Union of India and Mr. Md. Arif, learned A.P.P. for the State.

2. This is the third attempt of the petitioner seeking bail in Special Trial No. (PMLA) 01 of 2013, arising out of ECIR/01/PAT/2012 instituted under Sections 3/4 of the Prevention of Money Laundering Act, 2002.

3. The Court deems it appropriate to record that on 12.04.2016, when the case was taken up for the first time, on prayer made by learned counsel for the petitioner, the matter was adjourned. Thereafter on 20.04.2016, the Court had called for a report from the Court below with regard to the status of the case, request for delay and likely time by which the trial can be concluded. Thereafter, on subsequent dates i.e., 27.04.2016, 02.09.2016, 11.01.2017, 15.03.2017, 22.03.2017, 29.03.2017 and 03.05.2017, on prayer made by learned counsel for the petitioner, the matter was adjourned. On three occasions, the matter had been adjourned at the behest of opposite parties and finally on 01.11.2017, the Court had directed the Director General of Police, Bihar to file an affidavit relating to the cases/allegations/ complaints pending against the petitioner. Pursuant to the same, an affidavit has been filed personally affirmed by the Director General of Police, Bihar, Patna on 22.12.2017.

4. Due to paucity of time, the matter is adjourned for the day.



24.01.2018

“Heard Mr. Yogesh Chandra Verma, learned Senior Counsel along with Mr. Ghanshyam Tiwary, learned counsel for the petitioner; Mr. S.D. Sanjay, learned Additional Solicitor General along with Mr. Manoj Kumar Singh, learned Central Government Counsel, and Mr. Md. Arif, learned Additional Public Prosecutor, for the State.

2. Learned counsel for the petitioner submitted that though this is the third attempt for bail in the present case but the sheer fact that he has been in custody for close to five years itself is a good ground for grant of bail. It was submitted that the maximum punishment prescribed under the statute for the offences alleged against him, being seven years, crossing the half period much earlier, a right has accrued to him in terms of the amendment to the Code of Criminal Procedure, 1973, by which Section 436-A has been inserted which provides that if a person during the period of investigation, enquiry or trial for an offence, not being an offence for which the punishment of death is specified as one of the punishments under that law, has undergone detention for a period exceeding one-half of the maximum period of imprisonment specified under that law, he shall be released by the Court on his personal bond with or without sureties.

3. Learned counsel submitted that the petitioner has cooperated in the trial and the prosecution witnesses have already been examined and the same has also been closed. He contended that once the same is over, there cannot be any apprehension of the petitioner influencing any of the witnesses. Learned counsel submitted that he is ready to cooperate with the prosecution in the trial and any condition which may be deemed appropriate, is acceptable to him for grant of bail. In support of his contention learned counsel submitted that it is now the well settled principle with regard to grant of bail that the same is neither punitive nor preventative as deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused will stand his trial when



called upon. Learned counsel further submitted that punishment begins after conviction and that every person is deemed to be innocent until duly tried and duly found guilty.

4. Coming to the merits, it was submitted that seven cases have been mentioned as scheduled offences out of which two have resulted in acquittal and in the remaining five the petitioner is on bail. Learned counsel also contended that in none of the cases on which the present first information report is based, any connection has been shown with regard to the proceeds of any activity which is unlawful to be associated with acquisition of assets. Learned counsel submitted that the law under the Prevention of Money Laundering Act, 2002, mandates that a live link has to be shown with regard to the amount acquired by the person from unlawful sources which can be connected directly to acquisition of any particular asset which is the essence of the entire prosecution. Learned counsel submitted that the entire basis of launching of the present prosecution are the affidavits submitted by the petitioner before the Election Commission of India during election and before the Income Tax Department in his return. It was submitted that none of those authorities have found any discrepancy or error or wrong in such documents as not even a show cause has been issued to the petitioner and, thus, the presumption would be that they are satisfied with all the information contained in such documents and there is no illegality in the same. Learned counsel submitted that though as per the affidavit of the State, the petitioner is involved in 28 cases, in 14 he has been acquitted and in none of the cases there has been any conviction.

5. Learned counsel further submitted that since in seven scheduled offences registered against the petitioner which have been relied upon in the present first information report, two have resulted in acquittal and unless the petitioner is convicted in any of the remaining five, there cannot be any conviction in the present case, as the present case is dependent upon the result of those cases.

6. Learned counsel summed up his



argument by submitting that the petitioner is a sitting Member of the Bihar Legislative Council due to which he has been targeted for political reasons.

7. Due to paucity of time as arguments remained inconclusive, the matter is adjourned for the day to be listed, retaining its position.

31.01.2018

Heard Mr. Yogesh Chandra Verma, learned Senior Counsel along with Mr. Ghanshyam Tiwary, learned counsel for the petitioner; Mr. S. D. Sanjay, learned Additional Solicitor General along with Mr. Manoj Kumar Singh, learned Central Government Counsel and Mr. Md. Arif, learned Additional Public Prosecutor, for the State.

2. As arguments remained inconclusive on the last occasion, the same was continued.

3. Learned counsel for the petitioner submitted that out of the remaining five cases, which are still pending and which have been referred in the F.I.R., four of them are of a subsequent period to that when the assets were required and also subsequent to the declaration made by the petitioner before the Election Commission of India.

4. Mr. S. D. Sanjay, learned Additional Solicitor General, while opposing the prayer for grant of bail to the petitioner, submitted that the submissions made by learned counsel for the petitioner cannot be seen cut off from the ground reality. It was submitted that the main thrust before the Court at the time of filing of the application was that he was in custody and the prosecution was delaying the trial and unnecessarily he was being harassed and his constitutional right to freedom was being violated. It was submitted that the facts reveal otherwise.

5. He contended that in September, 2015, the prosecution had examined all its witnesses and the evidence on its behalf was closed and thereafter statement of the petitioner under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') was also recorded. It was submitted that thereafter the petitioner has produced



a list of total 599 witnesses which he proposed to examine in the present case and for the last over two years, only 29 such witnesses have been examined. Learned counsel submitted that the prosecution witnesses have been able to prove beyond reasonable doubt the guilt of the petitioner and, thus, being aware of the fact that conviction was likely, a ploy and method was being adopted to somehow ensure that the trial never concludes and verdict delivered, by creating a situation where, under the garb of the right of an accused to examine as many witnesses as he or she desires, an exorbitant and totally unjustified list of witnesses have been submitted to the Court which would conveniently ensure that for years to come and in the foreseeable future, the trial is not concluded.

6. Learned counsel submitted that another aspect which the Court would not lose sight of is the fact that the petitioner is accused in 28 cases and all of heinous and serious in nature, which indicates his antecedent, and further six cases have been instituted after the petitioner has been under custody, either in connection with other cases or with the present case, right till the year 2017. It was contended that in all cases in which trial is pending, the witnesses stand a good chance of either being influenced or intimidated or threatened from fearlessly deposing for the prosecution, once the petitioner is set free. Learned counsel further submitted that the fact that despite being in custody, trial has not concluded in six cases, even through such cases have been lodged in the year 1995, which itself is indicative of the fact that public interest requires that the petitioner should get the trial concluded as now the onus is on him as ball is in his court for the prosecution has already discharged its duty more than two years back.

7. Learned counsel submitted that the issue raised by learned counsel for the petitioner that now as a matter of some right he can claim for being granted bail in view of the insertion of Section 436-A of the Code, is misplaced, for the reason that the same is not an absolute right but is amenable to variation where the Court can record reason for denying the same and furthermore, as would be clear



from the explanation, the period for delay in the proceeding caused by the accused shall be excluded. It was, thus, submitted in the present case, for over two and a half years, the proceedings were entirely in the hands of the petitioner as only he had to produce his witnesses for getting the trial concluded, but he getting only 29 witnesses examined till date, is a pointer to the fate of the trial, if the petitioner is allowed to come out on bail.

8. *Learned counsel submitted that the Court may not treat this as an isolated case where a person is only accused under one or two cases but in the present case, when the list of accusation is long and serious, starting from year 1995 till 2017, the Court ought not to shut its eyes to such conduct of the petitioner that even from behind the bars he has been accused of running the show in criminal matters and once he is out on bail, the same would lead to him being emboldened and would be against public interest as one of the settled principles for considering bail is also the effect it would have on the general society if an accused is allowed to come out of jail and roam freely, especially when the records indicate that the petitioner is a hardened and habitual criminal. Learned counsel submitted that in the present case for which the petitioner is in custody, the law requires the accused to come clean and prove his innocence and when the prosecution has produced its witnesses which indicates the complicity of the petitioner, the defence now being sought to be created, besides being a dilatory tactic, may also be a futile attempt, for in such matters the sources of the money, besides being accounted for, has to be shown that at the relevant point of time in contemporary records such transactions are reflected, which in the present case the petitioner is not in a position to do as the contemporary records including to those of the Income Tax Department and the Election Commission of India do not reflect/ disclose any such evidence. It was submitted that only upon such disclosure before the authorities in contemporary records the petitioner would be permitted to explain such amounts, but where the very base is knocked off, as the petitioner has not*



disclosed the amounts, which are quite heavy, before the authorities, the second stage of explaining such amounts is misplaced and unavailable to him in law. However, he hastened to add that ultimately it is for the trial Court to take a call with regard to the guilt of the petitioner, but from the materials which have been brought on record during trial, the prosecution is confident that a verdict of guilt can be recorded based on the same.

9. Learned counsel submitted that the most glaring aspect of the episode is that during investigation the petitioner had not produced any such document/evidence/material, either to contend or even indicate that the source of money was from the 599 witnesses whose list has been given before the Court, as such ground was not even taken before the Investigating Officer, either by the petitioner or his wife, that such persons were genuine and living and had contributed for his election for explaining the allegations.

10. Today also, due to paucity of time, arguments could not be concluded and accordingly, the matter is adjourned for the day to be listed retaining its position.

07.02.2018

Heard Mr. Yogesh Chandra Verma, learned senior counsel along with Mr. Ghanshyam Tiwary, learned counsel for the petitioner; Mr. S. D. Sanjay, learned Additional Solicitor General along with Mr. Manoj Kumar Singh, learned Central Government counsel and Mr. Md. Arif, learned Additional Public Prosecutor, for the State.

2. After elaborate arguments being advanced over a number of days by both the sides, it transpires that out of the seven scheduled offences, which is the basis for the present F.I.R., in two, the petitioner has been acquitted. It was submitted on behalf of the petitioner that only upon conviction in any of the remaining five, the present case itself shall fall for the basis of the present case are those cases. Taking note of such fact, the Court cannot shut its eyes to the fact that even if prosecution witnesses in



the present case have been examined, if prosecution witnesses are not examined fully in the remaining five scheduled cases, then the Court would have to consider the objection of the prosecution that there may be more than fair chances of the petitioner either influencing or threatening the witnesses and tampering with the evidence.

3. In view thereof, let learned counsel for the State of Bihar file a specific affidavit giving details of the position of the trial and the number of witnesses remaining to be examined in the said five scheduled cases. He would also bring on record the position of the trial in such cases so as to enable the Court to form an opinion with regard to whether unnecessarily matters are being delayed.

4. As prayed for by learned counsel for the State, the matter is adjourned for the day, to be listed retaining its position.”

3. In terms of the order dated 07.02.2018, the State has filed affidavit with regard to the status of the five scheduled cases which form part of the allegation in the present case against the petitioner. The same discloses that in three cases, the prosecution witnesses have not been examined, in one only two out of ten prosecution witnesses have been examined and in the remaining case i.e., Khagaul P.S. Case No. 55 of 2007, the trial record could not be traced due to transfer of the case from one Court to another with the stand that as and when required, the witnesses will be produced before the Court.

4. After recording the detailed submissions on behalf of the parties, the Court had taken judicial note of the fact that if



prosecution witnesses are not examined fully in the remaining five scheduled cases, the Court would have to consider the objection of the prosecution that there may be more than fair chances of the petitioner either influencing or threatening the witnesses and tampering with the evidence. From the picture which emerges from the affidavit filed today, it transpires that almost entire prosecution witnesses are yet to be examined in those cases. Moreover, from the affidavit filed by the Director General of Police, Bihar, Patna, it is apparent that the petitioner is accused in 28 criminal cases of serious nature. As has been informed by learned counsel for the State, he is in prison since the year 2010 in connection with different cases whereas in the present case, he is on remand from 17.04.2013 and eight such cases have been instituted after the incarceration of the petitioner from the year 2010 and even till 2017.

5. Thus, in such background, strictly for the purposes of the present case, when prosecution has discharged its obligation of getting all its witnesses examined and in light of the fact that out of five scheduled offences which have been referred in the present case, except for two witnesses in one case, no prosecution witnesses have been examined, in the considered opinion of the Court, now the onus is totally on the defence i.e., the petitioner to get his witnesses examined for the purposes of at least getting the trial concluded in



the present case.

6. The Court is conscious that the trial should be concluded expeditiously and in this regard, at the cost of repetition, since all the prosecution witnesses have been examined by September, 2015 itself and thereafter it being totally within the capacity of the petitioner to get the trial concluded, as only his witnesses remain to be examined.

7. In view thereof, since the prosecution witnesses even in the five scheduled cases mentioned in the present case, almost none having been examined, and reasons recorded in the earlier order of this Court dated 29.08.2014 in Cr. Misc. No. 16640 of 2014, and further, no fresh ground having been made out for reconsideration of the prayer of the petitioner for bail, except for passage of time, taking an overall view in the matter, the Court is not persuaded to grant bail to the petitioner.

8. Accordingly, the application stands dismissed.

(Ahsanuddin Amanullah, J)

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