IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50554 of 2019

Arising Out of PS. Case No.-7 Year-2014 Thana- GOVERNMENT OFFICIAL COMP. District- Patna

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1. Bharat Yadav Son of Parmeshwar Yadav, Resident of Jamalpur Dih, Near Avantika Cinema, Jamalpur, P.S.- Jamalpur, District- Munger.
2. Smt. Satyabati Devi Wife of Bharat Yadav, Resident of Jamalpur Dih, Near Avantika Cinema, Jamalpur, P.S.- Jamalpur, District- Munger.
3. Amit Kumar Son of Parmeshwar Yadav, Resident of Jamalpur Dih, Near Avantika Cinema, Jamalpur, P.S.- Jamalpur, District- Munger.

... ... Petitioners

Versus

1. The Union of India through the Directorate of Enforcement, 1st Floor, Chandpur Place, P.S.- Gandhi Maidan, Patna- 800001.
2. Atul Kumar, Assistant Director (PMLA), Directorate of Enforcement, Prevention of Money Laundering Act, 2002, Government of India, 1st Floor Chandpur Place, Bank Road, West Gandhi Maidan, P.S.- Gandhi Maidan, Patna- 800001.

... ... Opposite Parties

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Appearance :

For the Petitioner/s : Mr.P.N. Sahi, Senior Advocate
Mr.Anshul, Advocate

For the Opposite Party/s : Mr.S.D. Sanjay (Addl.S.G.)
Mr.Kumar Priya Ranjan, CGC
Mr.Mohit Agarwal, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

7 27-11-2019 Heard learned Senior Counsel for the petitioners and learned Additional Solicitor General assisted by learned Central Government Counsel on behalf of the opposite parties.

Petitioners, in the present case, are seeking anticipatory bail in connection with Complaint Case No. 03 of 2018 lodged by opposite party no. 2 who is the Assistant Director of Prevention of Money Laundering Act.

After presentation of complaint, learned Sessions Judge-cum-Special Judge, PMLA vide his order dated 24.08.2018 has taken cognizance of the offence under Section 3 punishable under Section 4 of the Prevention of Money Laundering Act, 2002 (in short ‘PMLA’) and has decided to issue summons against the accused persons-petitioners. The order taking cognizance is available at Annexure ‘1’ to the present application.

Learned Senior Counsel representing the petitioners has given much emphasis on his argument that though the petitioner no. 1 is said to have been involved in as many as 27 criminal cases details of which are provided under Paragraph 2(i) of the complaint petition, the fact as on today is that in 26 cases he was acquitted by learned trial court whereas in one of the cases he has been recently acquitted by the learned appellate court. It is, thus, his submission that once the petitioner no. 1 stands acquitted in all the criminal cases, some of which were in respect of the scheduled offences, the opposite parties cannot allege that the property earned by him either in his name or in the name of his wife and relations would fall within the definition of “Proceeds of Crime” in terms of Section 2(u) of the ‘PMLA’.

Learned Senior Counsel has further submitted before this Court that from a bare reading of the definition of the words “Proceeds of Crime” and the definition of “Scheduled Offence” it would appear that unless the property derived or obtained by the petitioners may be said to be or have been earned through criminal activities relating to a scheduled offence, no proceeding under the ‘PMLA’ could have been initiated against the petitioners. In order to protect the petitioner no. 2, a further submission has been made saying that even the opposite parties have come out with a case that it is the petitioner no. 1 who has procured the property in the name of his wife (Petitioner No. 2) and as such there being no allegation that petitioner no. 2 has involved in any criminal activity relating to a ‘Scheduled Offence’, at least she is required to be protected by this Court.

As regards petitioner no. 3, it is stated that he is the brother of petitioner no. 1 and save and except that he was involved in the construction business with the petitioner no. 1, there is no other independent material to connect him with any criminal activity relating to a ‘Scheduled Offence’.

Learned Additional Solicitor General has opposed the prayer for anticipatory bail of the petitioners. He has taken this Court through the materials which have been revealed in course of investigation by the Enforcement Directorate. Paragraph '3' of the complaint petition lists out the several immovable properties which have been acquired in the name of these petitioners with the values at which those properties have been acquired. The total value of the immovable properties acquired in the name of petitioner nos. 1 and 2 have been found at Rs. 3,80,93,559/- apart from that there are details of the bank accounts and LIC policies etc. making the total immovable and movable property together valued at 4,23,61,990/-. The Enforcement Directorate has thereafter provided an analysis on the manner in which the properties have been acquired. It has been shown in various paragraphs that how cash were being deposited in the account of M/s. Jai Maa Kali Construction and then the amounts were brought in the accounts of the petitioners at the different stages for purpose of purchase of the properties. It has been shown that during the assessment year 2003-04 and 2012-13, the total net income of said firm was only 16,71,914/- but during this period a sum of Rs. 56 lacs were paid from the account of the firm in the different accounts from which the landed properties were purchased.

Learned Additional Solicitor General has also submitted that submissions of learned Senior Counsel for the petitioners that with the acquittal of petitioner no. 1 in the criminal cases now no proceeding under the 'PMLA' can go on is wholly misconceived, inasmuch as it would appear from the scheme of the 'PMLA' that Section 3 does not talk of a conviction of the accused in the criminal case relating to a 'Scheduled Offence'. It is submitted that Section 3 of the PMLA does not depend upon the conviction of the accused and once an accused has been charged for being involved in any process or activity by which he has acquired the property, the same would become a proceed of crime.

Having heard learned Senior Counsel for the petitioners and learned Additional Solicitor General for the opposite parties, this Court finds that at this stage a prima-facie case has already been found against the petitioners. They have been summoned by the learned Sessions Judge-cum-Special Judge, PMLA and in order to get protection from this Court under Section 438 of the Code of Criminal Procedure, the petitioners are not able to demonstrate that it is either a case of false implication of the petitioners and/or there is no prima-facie material to connect the petitioners with the present case. Before this Court the order taking cognizance and issuance of summons is not under challenge and at this stage for purpose of grant of anticipatory bail, this Court does not find any reason to take a view that the petitioners are being falsely implicated in this case and/or that they are required to be protected by granting a pre-arrest bail. This Court is, thus, is not inclined to grant privilege of anticipatory bail to the petitioners.

The application is dismissed.

(Rajeev Ranjan Prasad, J)

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