IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34788 of 2019

Arising Out of PS. Case No.-5 Year-2016 Thana- GOVERNMENT OFFICIAL COMP. District- Patna

==

Chakresh Jain @ Chakresh Kumar Jain, Son of Pawan Kumar Jain, Resident of Moh.- Ramna Road, Near Jain Mandir, P.S.- Gaya Town, Distt.- Gaya.

... ... Petitioner

Versus

U.O.I. through the Assistant Director (PMLA), Directorate of Enforcement, Govt. of India, Patna 1st Floor, Chandrapura Place, Bank Road, West Gandhi Maidan, Patna. 800001.

... ... Opposite Party

==

Appearance :
For the Petitioner/s : Mr. Abhay Kumar Thakur, Advocate
For the Opposite Party/s : Mrs. Nivedita Nirvikar, C.G.C.

==

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

C.A.V.

9 Dated:23.1.2020

This is an application for grant of anticipatory bail in connection with Special Trial No. (PMLA)-11 of 2018, arising out of ECIR No. PTZO/05/2016, dated 26.12.2016, disclosing offence under Section 4 of the Prevention of Money Laundering Act, 2002.

Prosecution case as per complaint lodged by the Assistant Director, PMLA in short is that earlier a Complaint Case No. 02 of 2018 was lodged against Shri Motilal, Shri Dhiraj Jain, Shri Pawan Jain, Shri Bimal Jain, Shri Rajesh Kumar Agarwal, Shri Rakesh Kumar Gupta as well as the officials of the Bank of India, G.B. Road, Gaya, in the light of the evidence emerging in course of further investigation, the supplementary complaint is being filed making the petitioner and other persons as accused in the money laundering case.

It further appears that the F.I.R. No. 339 of 2016 and F.I.R. No. 340 of 2016 has been registered against the officials of the Bank for deposit of the amount in the account of the informant of those cases, namely, Shri Shashi Kumar, Rajesh Kumar and one Smt. Rubi Kumari wife of the Rajesh Kumar and later on, without knowledge of the account holder, the same has been transferred to other accounts.

The main complaint as well as the supplementary complaint are in details and in nutshell, the allegation is that several crores of rupees has been deposited in the account of above three persons as well as other accounts without their knowledge or consent and the same has been transferred to Delhi, Kolkata and other places without their knowledge in order to facilitate himself of proceeds of the crime, during the day of demonetization in connivance with Bank officials to Delhi and Kolkata. There are the statements of the different accused persons made under Section 50 of PMLA Act as well as CDR details and other documents in support of above allegation.

So far this petitioner is concerned, there is allegation against this petitioner is that he is knowingly involved transfer of proceeds of crime and at his instance, the amount was received in the bank account of Smt. Rubi Kumari and transferred to different places. In the complaint petition, also disclose that the petitioner and other accused persons were working in conspiracy and as a gang in the money laundering the said proceeds of the crime.

Submission of the learned counsel for the petitioner is that complaint petition disclosed that a chart showing the placement, layering and integration, but none of the stage, petitioner is involved and moreover, petitioner has been granted anticipatory bail in Muzaffarpur P. S. Case No. 134 of 2017.

Further submission is that so far this petitioner is concerned, there is absolutely nothing against him. There is no substance in the allegation of the petitioner.

Learned counsel for the petitioner relying upon the reported decisions of the Hon'ble Apex Court in the case of "***Nikesh Tarachand Shah Versus Union of India and another*** reported in ***(2018) 11 SCC 1"*** has submitted that two conditions referred in Section 45(1) of the Prevention of Money Laundering Act, 2002 has already been held ultra vires.

Further cited two decisions, first in the case of "***Jai Prakash Singh Versus State of Bihar & Anr.*** reported in ***AIR***

2012 SC 1676" and another decision reported in the case of "***Siddharam Satlingappa Mhetre V. State of Maharashtra and Ors*** reported in ***AIR 2011 SC 312"*** regarding the principle for grant of anticipatory bail.

On the other hand, learned counsel for the Union of India has appeared and filed a detailed counter affidavit and referring some paragraphs of the detailed counter affidavit and it has been submitted that the order dated 01.03.2017 passed in Criminal Misc. No. 37821 of 2017 relating to Muzaffarpur Town P. S. Case No. 134 of 2017, this petitioner has admitted that he is the purchaser of the Sugar and paid the price of sugar as per direction of complainant Shri Rajesh Kumar Agarwal, Proprietor of M/s Maa Tara Agency, Muzaffarpur in two different accounts and thus there is no case of cheating and considering the same, he has been granted bail, but in his statement recorded under Section 50 of PMLA Act, he had stated that neither he made any payment of the amount of M/s Maa Tara Agency, Muzaffarpur, nor send any amount for taking of delivery of sugar. As such, stand of the petitioner are contradictory.

It has also been submitted that the above Muzaffarpur Town P. S. Case No. 134 of 2017 arises from Gaya Civil Lines

P. S. Case No. 339 of 2016 and 340 of 2016 originally lodged by the complainant Shashi Kumar, Rajesh Kumar Agarwal and his wife Rubi Kumari.

The other accused Moti Lal in his statement under Section 50 of PMLA has also stated that all the deposit in the bank account of the complainant and subsequent transfer to the bank account of M/s Maa Tara Agency, Muzaffarpur of the huge cash handed to him by the father of this petitioner on the direction of other co-accused.

The statement of Rajesh Kumar Aggarwal under Section 50 of PMLA Act also disclosed that he received the order for supply of sugar by petitioner/Shri Pawan Kumar Jain and received the above payments towards the above orders and when he came to know that debit has been disallowed by the bank account of M/s Maa Tara Agency, Muzaffarpur, he lodged an F.I.R. against the petitioner and his father for making advance payment from third party account in respect of placing of order of sugar. The CDR analysis also disclosed that the petitioner and his father in his constant touch with other accused persons Dhiraj Jain, Rajesh Kumar Agarwal and that shows involvement of the petitioner that he conspired for acquisition, transfer and concealment of proceeds of crime.

Learned counsel for the Union of India has further drawn my attention towards the counter affidavit stating that the statement of Shri Shyam Sunder Bajaj, Proprietor of M/s Shivam Agency, Kolkata in his statement under Section 50 of the PMLA Act disclosed that the payments received in his account of the complainant, namely, Smt. Rubi Kumari, has been made by the petitioner for supply of sugar and CDR location also disclosed that the petitioner and his father were in constant touch with Dhiraj Jain and Shyam Sunder Bajaj, as such, the aforesaid fact clearly disclosed the active involvement of the petitioner along with several other accused persons in the money laundering of the huge amount.

Learned counsel for the Union of India has also drawn my attention towards several documents, which is annexed with the counter affidavit.

Having heard both sides, so far judgment of Hon'ble Apex Court in the case of "***Nikesh Tarachand Shah Versus Union of India and another"***, is concerned, Hon'ble Apex Court has declared two conditions mentioned in Section 45(1) of the PMLA Act, 2002 as *ultra vires*. So far other decisions are concerned, that is for grant of anticipatory bail is concerned, it depends on the materials available on record in each cases. So for the present case is concerned, as discussed above, there are sufficient materials available on the record that shows the hand of the petitioner, who in collusion with several other accused persons was involved in the money laundering of crores of rupees.

It further appears that on perusal of the record that prayer for grant of anticipatory bail in the money laundering case of one Pawan Kamar Jain and one Dhiraj Jain has already been rejected by this Court, vide order dated 16.07.2019 passed in Criminal Misc. No. 56074/2019 and anticipatory bail of Dhiraj Jain has been rejected by a Co-ordinate Bench of this Court, vide order dated 28.09.2019 and anticipatory bail Bimal Jain has also been rejected by this Court, vide order dated 16.04.2019 passed in Criminal Misc. No. 74371 of 2018.

Considering the entire aspects of the matter, I am not inclined to grant privilege of anticipatory bail to the petitioner.

Accordingly, this application stands dismissed.

(Vinod Kumar Sinha, J)

Sunil Shukla/-

U		T	