

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.81919 of 2019

Arising Out of PS. Case No.-5 Year-2013 Thana- GOVERNMENT OFFICIAL COMP.
District- Patna

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ASHOK YADAV @ ASHOK KUMAR YADAV, Son of Rajendra Yadav,
Resident of Village - Chhechhani, P.S. - Bithan, Distt. - Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Union of India, through the Director, Directorate of Enforcement,
Government of India, New Delhi
3. The Assistant Director, Directorate of Enforcement Government of India, 1st
Floor, Chandpura Palace Bank Road, West Gandhi Maidan, Distt - Patna

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Bhubneshwar Prasad, Advocate Mr. Sarbottam Kumar Sarkar, Advocate
For the State of Bihar	:	Mr. Chandra Sen Prasad Singh, A.P.P.
For the U.O.I.	:	Mr. S.D. Sanjay, Additional Solicitor Genera Mr. Rajesh Kumar Verma, C.G.C. Mr. R.R. Tiwari, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

C.A.V. ORDER

6 29-05-2020 This matter has been taken up through Video Conferencing.

Heard learned counsel for the parties.

This application is for grant of bail in connection with Complaint Case No. 09 of 2018 wherein cognizance has been taken for offences under Section 4 of the Prevention of Money-Laundering Act, 2002 against the petitioner.

Allegation against the petitioner is that the petitioner amazed huge amount of movable and immovable property from his criminal activity in connection with twenty-six criminal



cases against the petitioner. Most of them were registered for offences “Scheduled” under Prevention of Money-Laundering Act, 2002.

The prayer for bail is on the ground:-

(a) That the petitioner is in jail since 14.06.2019 after remand in this case from some other case and investigation of the case is already complete. There is no chance of conclusion of the trial in the present exceptional circumstance of lockdown due to COVID-19 spread-up. The petitioner is ready to cooperate with the trial.

(b) The basis of launching of present prosecution is twenty-six criminal cases referred in the complaint petition. Out of that twenty resulted in acquittal prior to the filing of the present complaint case and in the rest cases FIR of the two cases are against unknown and two FIRs were lodged by the police. Hence, it cannot be casually inferred that the property of the petitioner was proceeds of the crime of the referred cases.

(c) The allegation is of discovery of property of more than 98 lakhs and proviso to Section 45 of the Prevention of Money-Laundering Act, 2002 empowers the Court to grant bail if the allegation of Money Laundering is of less than one crore rupees.



Mr. Y.V. Giri, learned Senior Counsel for the petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in **P. Chidambaram Vs. Directorate of Enforcement** reported in **2020(1)BLJ 200 SC** for the legal principles to be considered while considering the prayer for bail.

Mr. S.D. Sanjay, learned Additional Solicitor General for the Union of India strongly opposed the prayer for bail on the ground:-

(i) That the Prevention of Money-Laundering Act, 2002 was enacted to punish the economic offenders as the offences not only affect the individual rather causes harms to the community at large and even to the State Exchequer. Learned Additional Solicitor General submits that the economic offences are a class in itself and the gravity is an extremely relevant factor while considering bail.

(ii) The principles of P. Chidambaram's case (**supra**) is not applicable in the present facts and circumstances of this case because the petitioner is carrying twenty-six criminal case against him which was not a case in the matter of P. Chidambaram.

(iii) Learned Additional Solicitor General contends that the petitioner is not a law abiding citizen. In the year 2014



itself, in a judicial order, the High Court had directed the petitioner to surrender but the petitioner did not surrender and kept the investigation lingering for long. In the event of release, there is chances that the petitioner would tamper with the evidence.

(iv) Learned Senior Counsel contends that Section 45 of the Prevention of Money-Laundering Act, 2002 clearly stipulates that the accused can be granted bail only when the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and the accused is not likely to commit the offence in the event of release.

In P. Chidambaran's case (**supra**), the Hon'ble Supreme Court considered its earlier judgments on the issue of grant or refusal of prayer for bail and concluded in para 21 of the judgment as follows:-

“21. Thus from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of



securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of “grave offence” and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of



grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provides so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case to case basis on the facts involved therein and securing the presence of the accused to stand trial.”

In the background of the aforesaid principle, this Court has carefully considered the gravity factor and finds that once it is, prima facie, evident that out of twenty-six criminal cases relied by the prosecution, twenty had already resulted in acquittal, remaining two were registered against unknown and in the rest two, the police was informant, it cannot be, prima facie, gathered that undisclosed money of the petitioner was proceed of the crime. Mere accusation without any conviction cannot give rise to allegation that the petitioner has criminal background.



Secondly the petitioner is in custody since more than eleven months and there is no chance of conclusion of the trial in near future due to disrupted functioning of the Courts resulted from the out break of COVID-19.

There is no material to substantiate that the petitioner would tamper with the evidence or be non-cooperative in the trial. In Shri Gurbaksh Singh Sibbia vs. State of Punjab, (1980)2 SCC 565, the Constitution Bench of the Hon'ble Supreme Court said that the bail is not to be withheld as a punishment. The main object is to secure the attendance of the accused at the trial. The proviso to Section 45 of the Prevention of Money-Laundering Act, 2002 is applicable in this matter.

Considering the entire facts aforesaid, in my view, the petitioner deserves to be enlarged on bail. Hence, the petitioner above named is directed to be released on bail on furnishing bail bond of Rs.75,000/- (Rupees Seventy-Five Thousand) with two sureties of the like amount each to the satisfaction of learned Court below where the case is pending in connection with Complaint Case No. 09 of 2018 (PMLA) arising out of ECIR No. PTZO – 05/2013 and PTZO – 02/2018 in Special Trial No. 09/2018 (PMLA), subject to the following



conditions:-

(i) Both the sureties shall be resident of the territorial jurisdiction of the learned court below having immovable property within the jurisdiction of the court below.

(ii) The petitioner shall undertake that he shall fully cooperate with the trial and shall not tamper with the evidence, otherwise the learned court below would be at liberty to proceed according to law.

(iii) The petitioner shall not leave the country without permission of the learned court below.

(iv) The petitioner shall make available to the learned court below so that the proceedings of the trial may not hamper.

(Birendra Kumar, J)

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