

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 73052 of 2019

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

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Moti Lal @ Moti Lal Patwa, Male aged about 50 years, Son of Late Hulas Ram Resident of Patwa Toli, Manpur, Durgasthan, P.S.- Buniyadganj, District- Gaya.

... .. Petitioner/s

Versus

1. Union of India, Ministry of Finance through the Director, Enforcement Directorate, Lok Nayak Bhawan, 7th Floor, Khan Market, New Delhi-110001.
2. Navin Kumar Jha, Assistant Director (PMLA), Directorate of Enforcement, Government of India, 1st Floor, Chandpura Place, Bank Road, West Gandhi Maidan, Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ramakant Sharma, Sr. Advocate Mr. Hemant Kumar, Advocate
For the Opposite Party/s :		Mr. S D Sanjay, ASG Ms. Kanak Verma, CGC

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 11-06-2020

The matter has been heard *via* video conferencing due to lockdown imposed on account of the COVID-19 pandemic.

2. Heard Mr. Ramakant Sharma, learned senior counsel, along with Mr. Hemant Kumar, learned counsel for the petitioner and Mr. S. D. Sanjay, learned Additional Solicitor General (hereinafter referred to as 'ASG'), along with Ms. Kanak Verma, learned Central Government Counsel for the Union of India - Opposite Parties.



3. The petitioner is in custody in connection with Special Trial No. (PMLA) 2 of 2018 under Section 4 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the 'Act').

4. The allegation against the petitioner is of money laundering by depositing demonetized notes of more than Rs. 44 crores in accounts of various persons, including his own, and thereafter transferring it through RTGS into accounts of various other persons at Delhi and Kolkata, mostly in fictitious accounts.

5. Learned counsel for the petitioner submitted that the petitioner is nowhere involved in the entire episode as it was through the accounts of other persons namely Shashi Kumar and Rajesh Kumar in whose accounts huge amounts of cash were deposited post demonetization and from there, through RTGS, the amounts were transferred into various other accounts. It was submitted that on the basis of complaint lodged by Shashi Kumar and Rajesh Kumar, that fraud had been committed in their accounts, as without having made any cash deposits, transactions of heavy amounts were reflected in their accounts, police cases were registered and thereafter the Enforcement Directorate came into the picture leading to the present case. It was submitted that there is nothing to connect the petitioner to such heavy cash



deposits and the petitioner himself is the Managing Director of MDI Cotton Mills Private Limited located at Manpur in Gaya and his turn over is in crores and only his money was being deposited in his accounts and the same have also been shown in the Income Tax returns. Learned counsel submitted that as per the allegation, the petitioner after depositing the cash got the same transferred through RTGS to various accounts at the dictate of Dhiraj Jain and Niraj Jain, who were based in Delhi. Learned counsel submitted that Dhiraj Jain has been granted bail by the Hon'ble Supreme Court in **Special Leave to Appeal (Criminal) No. 6262 of 2019** *vide* order dated 19.09.2019. It was submitted that the petitioner is alleged to have transferred the money at the behest of Dhiraj Jain and he has been granted bail and, thus, the petitioner also is entitled to such indulgence. Learned counsel submitted that the petitioner has given his statement to the authorities and all his papers are presently in the custody of the Special Court and, thus, there cannot be any tampering by him. It was further submitted that the petitioner having a running mill, there was no chances of him absconding. Learned counsel submitted that only on presumption and the statement of the Bank officials, who have tried to falsely implicate the petitioner, he has been made accused. Learned counsel contended that Shashi Kumar and Rajesh Kumar,



who have filed cases that there was fraud committed in their accounts have not taken the name of the petitioner and further that the petitioner has no concern with those persons and, thus, could not have deposited such money as it was not in his knowledge with regard to accounts maintained by them. Learned counsel submitted that because the petitioner has good business and there is heavy transaction in his account, he has been made a scapegoat by the authorities to hide their misconduct without the petitioner being involved in such transactions. Learned counsel further submitted that though there is restriction under Section 45 of the Act but the same does not bar the Court from considering and granting bail if the Court is satisfied that the petitioner may be innocent and that there is no chance of tampering with the evidence. It was submitted that in the present case, both the conditions are satisfied and most importantly, the person namely Dhiraj Jain, who is said to be giving instructions to the petitioner with regard to transfer of money, having been granted bail, the case of the petitioner stands on a better footing. It was further submitted that details of the accounts in whose favour monies were transferred have not been given and only references have been given without there being any legal evidence relating to the same. It was submitted that even charges have not been framed



and, thus, there is little scope of the trial commencing in the near future, much less, the same being concluded and unnecessarily, the petitioner is languishing in jail. Learned counsel submitted that in the complaint itself, it has been written that the petitioner, Dhiraj Jain and two others were in touch right from the beginning and, thus, the case of Dhiraj Jain stands on a similar footing to that of the petitioner.

6. Mr. S D Sanjay, learned ASG submitted that the petitioner is in fact the main player in the whole episode. It was submitted that he is the person who actually brought the demonetized cash to the Bank where it was allowed to be deposited in the accounts of others persons without their knowledge and subsequently, they were transferred through RTGS to other accounts. It was submitted that Shashi Kumar and Rajesh Kumar had given blank cheques to the Bank for being used in case they defaulted in the loan repayment and, having been given in good faith, were misused, in connivance with the Bank officials by using them for RTGS transfer from their accounts to various other accounts. It was submitted that under such circumstances, it was the petitioner who had laundered the demonetized illegal cash into legal cash through the mode of depositing it in connivance with the Bank officials and then getting the same transferred to



various other accounts, most of which were fictitious. Learned counsel submitted that even from the account of MTI Cotton Mills Private Limited, of which the petitioner is the Managing Director, more than 13 crore rupees were transferred into various accounts of persons and firms which have been found to be fictitious. Learned counsel submitted that the level of satisfaction of the Court as contemplated in Section 45 of the Act is of a high level which has also been explained by a three Judges bench of the Hon'ble Supreme Court in **Rohit Tandon v. Enforcement Directorate**, since reported as **AIR 2017 SC 5309**, the relevant being at paragraph no. 15 onwards. It was further submitted that similarly the Hon'ble Supreme Court in **Gautam Kundu v. Directorate of Enforcement (Prevention of Money-Laundering Act)**, since reported as **(2015) 16 SCC 1**, has also indicated broad parameters for grant of bail. Learned counsel submitted that in those cases, the Hon'ble Supreme Court has upheld the rejection of bail by the High Court and has reiterated the law that on the basis of materials, the Court has to be satisfied that there are reasonable grounds for believing that the petitioner is not guilty of such offence and is not likely to commit any offence while on bail. In the present case, learned counsel submitted that in the counter affidavit filed on behalf of the opposite parties, materials have



been brought on record, most importantly, the statement given by the petitioner himself under Section 50 of the Act, which is admissible in law, with regard to his complicity in the entire act where he admits that he had deposited demonetized notes in such accounts, including his own. Learned counsel submitted that even otherwise, there has been corroboration of the petitioner being in regular telephonic contact with Dhiraj Jain and other accused persons, from their CDRs. Learned counsel submitted that under such circumstances, the obvious presumption, in the absence of there being any explanation as to how such huge demonetized notes came in the possession of the petitioner which he has deposited, the onus is on him to rebut and show that the same was *bona fide*, failing which, for the present at least, there is a presumption in law that the petitioner is guilty under the Act. Thus, learned counsel submitted that there being such strong evidence against him which is based on his own statement under Section 50 of the Act, the petitioner cannot be said to be innocent or not involved in the crime alleged. It was submitted that in such background, the first condition under Section 45, that the Court has to reach to a conclusion, maybe tentative and only for the purposes of considering the prayer for bail and without the same being prejudicial to the petitioner in trial, but none the less the



same being essential, that the person was not involved in crime under the Act, is not satisfied. Further, learned counsel submitted that with regard to the petitioner not being likely to commit any offence, in the present case, it was very much possible that the petitioner, after coming out, would be in a position to influence the witnesses, more so since the prosecution evidence has yet not been recorded. Thus, according to learned counsel, even the second criterion under Section 45 of the Act is not satisfied and goes against the petitioner. Learned counsel submitted that the Court may also take note of the larger ramification, as has been indicated by the Hon'ble Supreme Court in the case of **Y. S. Jagan Mohan Reddy v. CBI**, since reported as **(2013) 7 SCC 439**, where it has been held that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. It was submitted that the present case would amount to fraud on the public exchequer since notes which were demonetized with the objective that they should go out of circulation have been made legitimate by such illegal act of the petitioner. Learned counsel submitted that the case of Dhiraj Jain is different compared to the petitioner for the reason that Dhiraj Jain only gave instructions as to where the money was to be sent, but the actual act of getting demonetized cash being made legal by



depositing it into the Bank was solely the act of the petitioner. It was submitted that only after the illegal demonetized notes were made legal by showing them to be deposited in various accounts of other persons, which was done only by the petitioner, the role of Dhiraj Jain, will start as he has only instructed as to where such white money should be transferred. Thus, it was contended that there cannot be any similarity between the case of Dhiraj Jain and the petitioner. Learned counsel further submitted that recently the Hon'ble Supreme Court in **Special Leave Petition (Criminal) Diary No. 5150 of 2020** by order dated 03.06.2020 in the case of **Directorate of Enforcement New Delhi v. Upendra Rai** has issued notice and stayed the operation of the order of the Hon'ble Delhi High Court by which bail was granted to Upendra Rai in a case under the Act and has directed that if Upendra Rai has not already been released, he shall not be released.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds force in the arguments of learned ASG, and is not inclined to enlarge the petitioner on bail.

8. Accordingly, the application stands dismissed.

9. However, the Court, taking note of the submission of learned counsel for the petitioner that trial be directed to be



concluded within a fixed time-period, since all the evidence has been collected and the matter otherwise also is of public importance, the Court below as well as the parties shall ensure that the trial is expedited and completed at the earliest, preferably within a period of one year.

10. At this juncture, as it has been pointed out by learned ASG that due to the prevailing circumstances, the trial may not be able to commence for the present, the Court would only observe that in the meantime, all pre-trial formalities be completed, so as to ensure that when the Courts resume normal functioning, the trial proceeds without any further delay.

(Ahsanuddin Amanullah, J.)

P.Kumar/Anand Kr.

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