IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.84989 of 2019

Arising Out of PS. Case No.-3 Year-2018 Thana- GOVERNMENT OFFICIAL COMP.
District- Patna

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PREM KUMAR Son of Sarju Yadav Resident of Village-Mahsu, P.S.-Amba, District-Aurangabad.

... ... Petitioner/s

Versus

DIRECTORATE OF ENFORCEMENT, GOVT. OF INDIA, THROUGH ATUL KUMAR, ASSTT. DIRECTOR (PMLA) PATNA 1st Floor, Chandpura Place, Bank Road, West Gandhi Maidan, Patna.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Thakur
For the Opposite Party/s : Mr. Dr. K. N. Singh (A.S.G. Ind)
Mr. Rajesh Kumar Verma, CGC

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL ORDER

11 08-10-2020 Heard Mr. Ajay Kumar Thakur, the learned counsel for the petitioner, Dr. K. N. Singh, the learned A.S.G., Union of India, duly assisted by Mr. Rajesh Kumar Verma, the learned counsel.

The matter has been taken up through video conferencing.

The petitioner apprehends his arrest in Special Trial No. (PMLA) 1/19 (ECIR No.- PTZO/03/2018) for the offence allegedly committed by the petitioner under Section 4 of the Prevention of Money Laundering Act.

The complainant, in sum and substance, alleged that one Binay Yadav is an active member of banned outfit CPI

(Maosit), a left wing extremist organization and 46 cases are registered against him under different Sections of the IPC, Arms Act, Unlawful Activities (Prevention) Act and under many Sections of different Acts. Binay Yadav was involved in extorting money from innocent people/ security forces and collection of levy and proceeds of crime have been utilized for the acquisition of various movable and immovable properties in the name of his wife Srimati Devi, Pooja Kumari (daughter), Poonam Kumari (daughter), Sarju Yadav (Samdhi) and Prem Kumar (Son-in-law), the petitioner, who is son of Sarju Yadav. During the course of investigation the investigating officer of Enforcement Directorate found that in the name of Sarju Yadav, his son, the petitioner, his daughter-in-law, Pooja Kumari, daughter of Binay Yadav, many movable and immovable properties are standing. Prem Kumar had no independent source of income prior to his marriage. He filed false income tax returns of assessment year 2016-17, 2017-18 only with a view to show the properties acquired in his name through valid means.

The learned counsel for the petitioner submits that petitioner is innocent and he has committed no offence. There is no tangible evidence on record to show that petitioner, his wife, his father acquired any property out of proceeds of crime of his father-in-law, Binay Yadav. The petitioner has got no criminal antecedent. The petitioner was married on 19.06.2014 with Pooja Kumari, daughter of Srimati Devi and Binay Yadav. The petitioner never met his father-in-law. The petitioner has got ancestral property of about 12 Bigha of land. Prior to marriage of the petitioner, the petitioner had transport business and five vehicles were plying on the road including tractor and the passenger buses. It is submitted that one vehicle, being tractor bearing registration No. PID 8445 was purchased in the year 2001 in the name of father of the petitioner from joint family property earning and the tractor was used for business purpose. Second vehicle being bus bearing registration No. JH12B-3030 was purchased in the year 2006. Third vehicle being bus bearing registration No. JH0M-1128 was purchased before the marriage of the petitioner. Similarly, fourth vehicle being Jeep bearing registration No. JH03A-1255 was also purchased for commercial purpose before marriage of the petitioner. In the year 2013 two vehicles, one bus and another mini bus bearing registration Nos. BR26E-6665 and JH26A-9969 were purchased. The petitioner was minor at that time. Subsequently, the petitioner started managing transport business of his family.

In the year 2016 the petitioner purchased a mini van after selling vehicle No. BR26A-9969 to one Dhananjay Singh of Aurangabad and the vehicle was sold somewhere else in the month of June-July, 2016. The petitioner purchased a Mahindra Mini Van for Rs. 4,34,315/- bearing registration No. BR20K-3980 and the same was given to Sanskar Jyoti Public School for carrying the children. It is further submitted that petitioner started earning huge money from the commercial vehicles and he started filing income tax return from the year 2016-17, 2017-18 and 2018-19. The return was accepted by the income tax department. It is submitted that petitioner and his family members had no concern with Binay Yadav and they did not receive any farthing from the proceeds of crime of Binay Yadav. It is further submitted that complainant has wrongly stated that petitioner got Rs. 7,50,000/- and Rs. 2 lacs in his bank account on different dates in the name of Pooja Kumari and Punam Kumari from Srimati Devi and the amount was withdrawn for purchasing the vehicles. Srimati Devi deposited the amount out of her Stridhan. It is also wrongly stated that on the order of Srimati Devi, Dhananjay Kumar deposited Rs. 1,50,000/- and Upendra Kumar deposited Rs. 2 lacs on 18.03.2017. It is submitted that Dhananjay Kumar purchased 2nd bus of the family of the petitioner and for that he deposited Rs. 1,50,000/-. Dhananjay Kumar reiterated the facts before the Investigating Officer. It is submitted that family of the petitioner remained in transport business for more than two decades prior to marriage of the petitioner and the family of the petitioner was having good income from the business. Therefore, there is no material to show that petitioner amassed property out of crime proceeds of his father-in-law. It is further submitted that in view of judgement of this court passed in Cr. Appeal (SJ) No. 4446/2018 the case has been transferred to the court of learned Special Judge and, accordingly, the entire process up to issuance of summon against the petitioner is bad in law, hence, the petitioner deserves anticipatory bail.

Dr. K. N. Singh, the learned ASG, Union of India, has submitted that Binay Yadav has generated huge proceeds of crime through commission of these offences and has acquired huge immovable and movable assets amounting to Rs. 76,98,359/- in the name of his wife Srimati Devi, daughters, Pooja Kumar and Punam Kumari, son-in-law, Prem Kumar (husband of Pooja Kumari) and Sarju Yadav (father of Prem Kumar). It is further submitted that petitioner and his father made conscious attempt to conceal the proceeds of crime of

Binay Yadav. Pooja Kumari in her statement u/s 50 of PMLA stated that immovable property, in her name and in the name of her sister, Poonam Kumari, were acquired and the cash deposit in her account has been made by her mother, Srimati Devi. She also admitted that she had no source of income and this fact itself shows that Srimati Devi acquired immovable property and deposited cash in the name of her daughter out of proceeds of crime acquired by Binay Yadav. The petitioner was married with Pooja Kumari, daughter of Binay Yadav, and after marriage the petitioner acquired six vehicles valued at Rs. 46,21,449/- and two plots of land valued at Rs. 80 lacs. Prior to the year 2014, the total cash deposits in the bank account of Prem Kumar and Sarju Yadav was Rs. 4,20,000/- and from the year 2014 onwards it was Rs. 40,45,700/-, an increase of 896%. Prem Kumar and his father have not filed income tax returns prior to the financial year 2015-16. Prem Kumar in his statement u/s 50 of PMLA has admitted that he filed income tax return for financial year 2015-16, 2016-17 only to legalize his income on false source of income and this fact itself shows that he made conscious attempt to conceal the proceeds of crime acquired by Binay Yadav by filing false income tax return. Prem Kumar admitted that he received Rs. 18,50,000/- during the period 09.07.2015 to

24.11.2017 from Srimati Devi, his mother-in-law, who has no source of income and she does not file income tax return. Prem Kumar further admitted that he has no source of income before his marriage. Sarju Yadav disclosed that his annual income was Rs. 80,000/- to Rs. 85,000/- only prior to purchase of the vehicles. These statements of Prem Kumar and his father amply made it clear that they invested crime proceeds of Binay Yadav in amassing huge property and after the year 2014 their movable and immovable properties increased more than 800 times. It is further submitted that prior to the purchasing of Mini Van and making payment of Rs. 3,57 lacs through cheque cash has been deposited in the account of Prem Kumar by Srimati Devi. Even the loan taken for the purchase of the vehicle has been repaid either in cash directly or through bank account after making cash deposits in the said bank account. Prem Kumar and his father did not offer any explanation to such deposits made in their accounts. Sarju Yadav disclosed the names of Umakant Singh and Ravikant Singh who transferred funds through their bank accounts to the seller of JCB after giving them equivalent amount in cash and this fact itself shows the payment of cash out of proceeds of crime in the account of Umakant Singh and Ravikant Singh by the petitioner and his father. The petitioner avoided appearance after issuance of summons. It is further submitted that it is well settled law that if the proceeds of crime is found in possession of any person it was he who has to explain the source of such income. The petitioner has not given any satisfactory explanation in his statement recorded u/s 50 of PMLA.

Perused the records.

The complainant/ officials of ED has made specific allegation that petitioner and his family members has acquired movable and immovable properties worth Rs. 80 lacs from the proceeds of crime of his father-in-law. The petitioner was married with Pooja Kumari in the month of June, 2014. Prior to the year 2014 the petitioner and his father have not produced any documentary evidence to show the acquisition of movable and immovable properties save and except ancestral property standing in the name of ancestor of the petitioner but after marriage of the petitioner with Pooja Kumari, daughter of Binay Yadav and Srimati Devi, the petitioner and his family acquired many buses, vehicles and immovable property. The petitioner also made attempt to file income tax return of the year 2015-16, 2016-17 and 2017-18 to legalize the proceeds of crime as his income but the facts show that petitioner got money from his mother-in-law either through his wife or through different persons in acquiring movable and immovable properties. Therefore, I find that the petitioner does not deserve anticipatory bail. Accordingly, the petition for anticipatory bail is rejected.

(Prabhat Kumar Jha, J)

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