IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.27648 of 2021

Arising Out of PS. Case No.-1 Year-2016 Thana- GOVERNMENT OFFICIAL COMP. District- Patna

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DIBESH KUMAR CHOUDHARY SON OF SURYA NARAYAN CHOUDHARY R/O VILLAGE- BISHANPUR, P.S.- (ANANDPUR) ASHOK PAPER MILL, DARBHANGA

... ... Petitioner/s

Versus

THE UNION OF INDIA THROUGH ASSISTANT DIRECTOR, ENFORCEMENT DIRECTORATE, GOVT. OF INDIA (AUTHORIZED OFFICER OF THE CENTRAL GOVERNMENT UNDER THE PREVENTION OF MONEY LAUNDERING ACT, 2002), FIRST FLOOR, CHANDPUR, BANK ROAD, WEST GANDHI MAIDAN, PATNA

... ... Opposite Party/s

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Appearance :

For the petitioner : Mr. N.K. Agrawal, Sr. Advocate
Mr. Gautam Kejriwal, Advocate

For the Union of India : Mr. K.N Singh, Addl, SG

For the BSFCSC : Mr. Shailendra Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL ORDER

13 14-02-2022 Heard learned Senior Counsel for the petitioner, learned Addl. Solicitor General for the Union of India and learned counsel appearing for the Bihar State Food and Civil Supplies Corporation ('BSFCSC' in short) through video conferencing.

The petitioner has preferred this application for grant of regular bail in connection with Special Trial (PMLA) Case no. 5 of 2020 registered under section 4 of the Prevention of Money Laundering Act, 2002 ('PML Act' in short).

As per the prosecution case, a complaint was filed under the PML Act by the Assistant Director, Enforcement Directorate, Ministry of Finance, Government of India stating therein that three FIRs being Laheriasarai P.S. Case no. 37 of 2015 under sections 420, 406, 409 and 120B of the Indian Penal Code, Laheriasarai P.S. Case no. 54 of 2015 under sections 420, 406 and 409 of the Indian Penal Code and Laheriasarai P.S. Case no. 155 of 2015 under sections 420, 406 and 409 of the Indian Penal Code was registered against the petitioner and another. It was stated that scrutiny of the FIRs revealed that the petitioner had acquired huge properties in his name and in the name of his family members. In the FIR no. 37 of 2015 the allegation against the petitioner was of defalcation of 32,468.80 quintals of wheat valued at Rs. 4,26,80,292.50, FIR no. 154 of 2015 mentioned about defalcation of 5380.40 quintals of rice valued at Rs. 94,92,639 and FIR no. 155 of 2015 stated about defalcation of 69,770.19 quintals of rice valued at Rs. 15,10,91,532.65. The complaint gave the details of the eight properties being the alleged proceeds of crime ('POC' in short). Against the total POC amounting to the tune of Rs.20,32,64,464/ the eight properties were worth Rs. 1,15,03,159 and the same were acquired through proceeds of crime. The said properties were purchased by different sale deeds in between 14.12.2011 and 2.5.2013. It was further stated that during course of investigation under the PML Act, statement of the complainant as also the statement of others including the petitioner were recorded and the income tax return etc were scrutinized. On scrutinizing the documents, it transpired that for the financial year 2012-13 against the income of Rs. 14,52,416/- declared by the petitioner, the property purchased in the said period was to the tune of Rs. 1,07,67,854/-. A total cash deposit of Rs. 5,20,000/- were made in the bank account on 31.8.2012 and no evidence in support of the source of the cash deposit was produced. Further, scrutiny of the Bank account in the name of the petitioner revealed that proceeds of crime generated through selling of the defalcated wheat and rice were deposited in the account and subsequently Rs. 55 lacs (approx) was paid to Murari Prasad Choudhary (Munshi of petitioner), Rs. 10.5 lacs paid to Ramrit Thakur (worker of petitioner) and Rs. 12 lacs to Joyti Kumar Choudhary (son of petitioner). As such it was stated that the petitioner is knowingly involved in acquisition, concealment and transfer of proceeds of crime and showing the same to be untainted. Thus he has committed offence under section 3 of the PML Act which is punishable under section 4 of the said Act. Scrutiny of the of accounts and income tax return showed that the wife of the petitioner, inspite of being a house wife and having no independent source of income declared an aggregate income for the period from Assessment AY 2009-10 to 2015-16 to be Rs. 17,12,570/- as income from business, house property and other sources. Out of the total proceeds of crime (POC) i.e. Rs. 20.23 crores acquired by the petitioner and others as alleged in the predicate cases, properties worth only Rs. 2.04 crores have been attached and thus, further investigation will be carried out to find the remaining POC. It was prayed that cognizance of the offence of money laundering as defined under section 3 and punishable under section 4 of the PML Act be taken and it may be proceeded in accordance with law by issuing process against the petitioner and others.

By order dated 25.8.2020 (Annexure-3) passed in Special Trial no. (PMLA) 5/2020 by the learned Sessions Judge /Special Judge (PMLA), Patna, cognizance was taken under section 4 of the PML Act against the accused persons including the petitioner herein.

It is submitted by learned Senior Counsel appearing for the petitioner that as would be evident from perusal of the complaint, the instant case under the PML Act arises from the three FIRs being 37 of 2015, 154 of 2015 and 155 of 2015 all under Laheriasarai Police Station. It is submitted that the petitioner has been granted anticipatory bail in all the three cases. Against the allegation of defalcation of Rs. 15 crores made by the BSFCSC, the matter went to the arbitrator where the arbitrator reduced the amount from 15 crores to Rs. 5 crores. The same is under challenge before the District Judge, Patna. Besides a certificate case bearing no. 37 of 2015 has also been filed by the BSFCSC and the same is pending with order that no coercive steps shall be taken against the petitioner in the said case. It is further submitted that on the initiation of proceedings under the PML Act, the attachment of the petitioner's property under section 5 of the Act was appealed against before the appellate authority and in the appeal interim order that no coercive steps shall be taken against the petitioner has been passed.

It is further submitted on behalf of the petitioner that the allegation against the petitioner is that he defalcated a total sum of Rs. 20 crores of the BSFCSC against which properties were purchased. The Economic Offences Wing referred the matter to the Enforcement Directorate and the ECIR Case was registered. The case of the Enforcement Directorate is that the properties were purchased from the defalcated amount and cash deposits were made. By order dated 25.8.2020 cognizance was taken under section 4 of the PML Act. The petitioner has been interrogated on six occasions, the last being on 14.7.2020 whereafter he has not been called for questioning. The petitioner is in custody since 29.6.2020 and investigation in the case has concluded. There are 21 witnesses who will need to be examined and the trial has still not commenced. It is submitted that the petitioner having been enlarged on anticipatory bail in the three cases from which the instant case under the PML Act arises, the investigation having concluded, the Court may impose conditions and the petitioner undertakes that he will appear before the authorities/Court as and when directed. The evidence being primarily documentary in nature and the same being in possession of the Investigating Agency, there is no chance of the same being tampered with. As such it is prayed that the petitioner be enlarged on bail.

Learned Senior Counsel further relies on the judgment dated 28.5.2020 passed in Cr. Misc. no. 41413 of 2019 (Most. Ahaliya Devi vs. The State of Bihar and others), judgment dated 31.5.2021 passed in Cr. Misc. no. 2457 of 2021 (Pankaj Agrawal vs. Union of India), judgment dated 19.7.2016 passed in WP (C) no. 15378 of 2016 (K Samsuddin vs. Union of India and others), judgment dated 23.11.2017 passed in writ petition (Cr.) no. 67 of 2017 (Nikesh Tarachand Shah vs. Union of India and Others), judgment dated 9.5.2013 passed in Cr. Appeal no. 730 of 2013 (Y.S. Jaggan Mohan Reddy vs. CBI) and judgment dated 5.9. 2019 passed Cr. Appeal no. 1340 of 2019 (P Chidambram vs. Directorate of Enforcement).

Learned counsel appearing for the BSFCSC submits that it is true that the instant case arises from the three FIRs which have been mentioned herein above, however the conduct of the petitioner even in those cases have not been cooperative. Learned counsel for the BSFCSC refers to the order dated

14.9.2015 passed in Cr. Misc. no. 31117 of 2015 (Divesh Kumar Choudhary vs. the State of Bihar and another) to submit that bail was granted to the petitioner in the said case on the condition that the petitioner had agreed to deposit 20 % of the alleged defalcated amount within a period of 12 months from the date of the order, however, the same was not deposited by the petitioner. It is further submitted that in view of the orders of the Hon'ble Supreme Court the bail bond of the petitioner stood automatically cancelled because of non-compliance of the order of the Hon'ble Supreme Court.

Learned Addl. Solicitor General appearing for the Union of India submits that so far as the conduct of the petitioner is concerned, the bail granted to the petitioner in the three cases stood cancelled as the petitioner did not furnish Bank guarantees in terms of the order of the Hon'ble Supreme Court. Various properties were acquired by the petitioner from the proceeds of crime (POC), details of which have been given in the complaint. Against the total defalcated amount of Rs. 20 crores, properties worth only Rs. 2 crores have been attached while the remaining amount has been siphoned of and investigation is to be carried out to recover the same. It is submitted that though the predicate offences are the three FIRs which have been referred to hereinabove, however once the ECIR case is registered under the PML Act and investigation started, the case is taken to its logical conclusion. Although section 49 of the PML Act provides for the case to be tried by the same Court, the result of the case under the PML Act is not dependent on the result of the predicate case. So far as the interim order granted in the certificate case is concerned, the same has no bearing on the case under the PML Act. The allegations contained in the complaint is an economic offence which is in a class of its own. Such offences involving economy of the country are to be treated in a very serious manner. Learned senior counsel in support of his contention relies on the judgment dated 28.1.2022 passed in Cr. Appeal (BA) no. 1149 of 2021 (Ajay Kumar vs. Directorate of Enforcement, Nagpur and another) passed by the Nagpur Bench of the Bombay High Court and judgment dated 4.1.2022 passed in Cr. Appeal no. 21 of 2022 (The Assistant Director, Enforcement Directorate vs. Dr. V.C Mohan) passed by the Hon'ble Supreme Court.

Heard learned counsel for the parties.

The main thrust of the submissions made by learned Senior Counsel appearing for the petitioner is that the petitioner having been granted anticipatory bail in the three cases i.e. the predicate offences and the investigation in the present case having concluded with submission of charge sheet, the petitioner be enlarged on bail. On the other hand, it is submitted by learned Additional Solicitor General appearing for the Union of India that though the three cases referred to in the complaint are the predicate offences on the basis of which the instant case under the PML Act has been registered, however the instant case under the PML Act is distinct and different from the earlier three cases and the instant case has to be heard on its own merit. Grant of bail in the earlier three cases does not have any bearing so far as this case is concerned. Further section 45 of the PML Act has to be kept in mind at the time of grant of bail.

Having heard learned counsel for the parties and taking into consideration the facts and circumstances of the case as also the materials on record, it transpires that the allegation against the petitioner is that he along with others were knowingly involved in acquisition, concealment and transfer of proceeds of crime and projection of the same as untainted. Pursuant thereto cash deposits of Rs. 5 lacs, various transactions relating to purchase of immovable properties etc were recovered and have been mentioned in detail in the complaint, as referred to herein above. Further section 45(1)(ii) of the PML Act 2002, provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence under the PML Act shall be released on bail unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. The Bombay High Court in its order dated 28.1.2022 passed in Cr. Application (BA) no. 1149 of 2019 (Ajay Kumar vs. Directorate of Enforcement, Nagpur) held as follows :

> "49. We may reiterate that the reference arose out of statutory jurisdiction and not constitutional jurisdiction of this Court. Unless there is proper challenge and pleadings, the issue of constitutional validity cannot be undertaken. Undoubtedly, the Legislature has power and competence to amend the provisions of the Act. Unless the amended provision is struck down by the Courts, it cannot be watered down. Since after the amendment the entire complexion of section 45 has been changed, we are not in agreement with the contention that the entire section has to be reenacted by way of amendment after decision in the case of Nikesh Shah (Supra). Therefore, in our opinion, the twin conditions would revive and

operate by virtue of Amendment Act, which is on date in force. In view of that, we answer the reference by stating that the twin conditions in section 45(1) of the 2002 Act, which was declared unconstitutional by the judgment of the Apex Court in Nikesh T.Shah vs. Union of India (2018) 11 SCC 1, stand revived in view of the Legislative intervention vide Amendment Act 13 of 2018."

Further, the Hon'ble Supreme Court in its order dated 4.1.2022 passed in Cr. Appeal no. 21 of 2022 (The Assistant Director, Enforcement Directorate vs. Dr. V.C. Mohan) held as follows :

" Mr. Dama Seshadri Naidu, learned senior counsel appearing for the respondent invited our attention to the dictum in paragraph 42 of the judgment in Nikesh Tarachand Shah vs. Union of India & Anr. reported in (2018) 11 SCC 1. The observations made therein have been misunderstood by the respondent. It is one thing to say that Section 45 of the PMLA Act to offences under the ordinary law would not get attracted but once the prayer for anticipatory bail is made in connection with offence under the PMLA Act, the underlying principles and rigors of Section 45 of the PMLA Act must get triggered-although the application is under Section 438 of Code of Criminal Procedure. As aforesaid, the High Court has not touched upon this aspect at all.

It is urged before us by the respondent that this objection was never taken before the High Court as it is not reflected from the

> impugned judgment. It is not a question of taking objection but the duty of court to examine the jurisdictional facts including the mandate of Section 45 of the PMLA Act, which must be kept in mind.
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> Accordingly, we deem it appropriate to set aside the impugned judgment and order and relegate the parties before the High Court for reconsideration of Criminal Petition No. 4134 of 2021 afresh for grant of anticipatory bail filed under Section 438 of the Code of Criminal Procedure in connection with stated PMLA offence."

In view of the facts and circumstances stated herein above, in view of the allegations leveled against the petitioner, the materials on record as also in view of section 45 of the PML Act 2002, in the opinion of this Court, the petitioner has not made out a case for grant of bail and the application stands rejected.

(Partha Sarthy, J)

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