IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44378 of 2019

Arising Out of PS. Case No.-2 Year-2016 Thana- GOVERNMENT OFFICIAL COMP. District- Patna

==

DINESH PRASAD GUPTA Son of Ramchandra Sao Resident of - Pokharpur, P.S.- Giriyak, Distt - Nalanda, 803115

... ... Petitioner/s

Versus

1. THE UNION OF INDIA
2. The Assistant Director, Directorate of Enforcement Government of India 1st Floor, Chandpura Palace, Bank Road, West Gandhi Maindan, Patna - 800001., Bihar
3. Distrcit Manager, Bihar State Food and Civil supplies Corporation, Nalanda. Bihar

... ... Opposite Party/s

==

Appearance :

For the Petitioner/s	:	Mr.Krishna Mohan Mishra, Advocate
For the BSFC	:	Mr.Shailendra Kumar Singh, Advocate
For the ED	:	Dr.K.N. Singh, Sr. Adv., ASGI Mr.Manoj Kumar Singh, CGC Mr.Amarjeet, JC to ASG Mr.Abijeet Gautam, JC to ASG

==

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

10 16-08-2022 Heard the parties.

The petitioner apprehends his arrest in connection with Special Trial (PMLA) No-7 of 2018, arising out of Giriyak P.S. Case No.77/2013, registered for the offence punishable under Sections 406, 407, 409, 420 of the IPC, section 7 of E.C. Act.

The cognizance has been taken against the petitioner and other accused persons u/s 4 of P.M.L. Act in pursuance of ECIR No. PTZO/02/2016, dated 26.08.2016, the official complaint filed by the Assistant Director, Directorate of Enforcement, Government of India.

According to the prosecution case, after preliminary inquiry against the petitioner accused Dinesh Prasad Gupta and other co-accused persons who have been found to have committed offence u/s 3 of the P.M.L. Act, the complaint was filed on F.I.R. bearing no.77/2013 dated 04.05.2013, registered initially by P.S. Giriyak, Nalanda, Bihar against the petitioner, Proprietor of M/s Pawapuri Rice Mill u/s 406, 407, 409 and 420 of the IPC. It is alleged that petitioner, on behalf of M/s Pawapuri Rice Mills had received total 1,90,381.31 quintals of paddy as per agreement executed with Bihar State Food and Supplies Corporation Ltd. And M/s Pawapuri Rice Mills had to deposit 1,29,459.17 quintals of rice (68% of paddy received) to the Food Corporation of India but he could deposit only 75293.39 quintals of rice. Hence, the suspect firm through petitioner Dinesh Prasad Gupta had misappropriated 54,165.70 quintals rice valued at Rs.10,15,94,961/- (Rs.Ten Crore Fifteen Lakh Ninety Four Thousand Nine Hundred and Sixty One only) at the rate of Rs.1875.63 per quintal. Therefore, Charge sheet No.243/2013 dated 31.12.2013 was filed against the petitioner and others and they have been charged for the offence of cheating and dishonestly inducing delivery of property. The amount of loss caused to the State exchequer is the proceeds of crime generated by the accused from the 'schedule offence' for which a case of Money Laundering as defined u/s 3 and punishable u/s 4 of the Prevention of Money Laundering Act (PMLA) 2002 has been registered against them. It is further alleged that during investigation, it has come that the petitioner namely Dinesh Prasad Gupta, s/o Ram Chandra Sao had signed the agreement with Bihar State Food and Civil Supplies Corporation Ltd. in the capacity of Proprietor, M/s Pawapuri Rice Mill. The investigation under the PMLA, 2002 reveals that M/s Pawapuri Rice Mill is not a proprietorship firm but it is a partnership firm wherein the petitioner is a partner in the said firm established in the year 2009 as certified copy of Partnership Deed No.622 of M/s Pawapuri Rice Mill dated 08.11.2011 was obtained from the office of the District Sub-Registrar, Nalanda which reveals that the firm M/s Pawapuri Rice Mill was originally constituted on 27.02.2009 and reconstituted on 08.11.2011. It is further alleged that during course of investigation under PMLA, 2002 petitioner-accused confirmed in his statement u/s 50 of the PMLA that M/s Pawapuri Rice Mill is a partnership firm and he looks after the business activity of the firm and all the financial decisions are taken only by him.

His statement has been corroborated by accused Binesh Prasad Gupta in his statement dated 06.03.2018. It is further alleged that the details available with official website of Ministry of Corporate Affairs, Government of India reveals that the Company M/s Pawapuri Rice Mill Pvt. Ltd. was incorporated on 01.04.2011 with CIN-U15312BR2011PTC01699 having authorized capital of Rs.10 Lacs.

Learned counsel for the petitioner submits that the petitioner is falsely implicated in this case and petitioner has not committed any offence u/s 420 of the IPC, as such, the provision of the PMLA is not applied. It is further argued on behalf of the petitioner that in an agreement made between the District Manager, BSFC and Pawapuri Rice Mill, the petitioner has signed as a partner and as per the agreement the petitioner had to mill the paddy and had to deposit resultant rice to the corporation and accordingly, petitioner milled the paddy, supplied rice of 1,13,632 quintals to the SFC through transporter appointed by the Corporation. It is further argued that it appears from the statement recorded u/s 50 of PMLA of the petitioner that the petitioner had submitted evidence to show that the firm had supplied 1,13,632 quintals of rice not 75,593 quintals as alleged in the complaint petition and the complainant had misconceived and construing that the petitioner had to supply rice to the FCI. The evidence submitted in the shape of agreement and the instruction issued by District Collector, Nalanda demonstrate that the petitioner had only to mill the paddy. The State Government and the district administration had the responsibility to collect rice from the rice mill. For this purpose transporter was also appointed by the SFC. They had collected rice and had issued receipt in token of acceptance of rice. Therefore, the allegation against the petitioner that he has made defalcation of rice and only deposited part of the rice is not correct and no offence u/s 420 IPC is made out against him. He has not committed offence u/s 3 of PMLA as neither he own or acquire property. The petitioner and his family members has submitted documents as directed by the opposite party no.2 (E.D.). The said O.P. No.2, however, had not made physical verification of stock nor statements were recorded from the staff of the mill or from the officer of the State Food Corporation and District Administration, who were directly involved in procurement of paddy, milling work, supply of rice from mill to F.C.I. The rice mill is running taking financial support from the bank and there is huge loan against the petitioner's firm and all the assets purchased out of the loan taken from the bank. The petitioner had submitted balance sheet, bank statement, copy of income tax return during the course of investigation and there is no evidence or material found during investigation that the petitioner has acquired assets or generated crime proceed as there was agreement between the SFC and the petitioner for milling of paddies. It is further stated that the petitioner has never admitted before the respondent no.2 or u/s 50 of the PML Act that he was not supplied rice or has defalcated sum of money. As per agreement, petitioner had milled the paddy and it is the duty of the SFC to lift the rice from the mill premises and deposit the same to the F.C.I.

Dr. K.N. Singh, Sr. Advocate appearing for the Enforcement Directorate has opposed the prayer for bail of the petitioner and submits that petitioner has not appeared in spite of summons issued to him by the Court and during investigation under PMLA, it is revealed that the petitioner knowingly failed to deposit the rice and misappropriated total 54,165.70 quintals of rice valued at Rs.10.15 Crore was defalcated and equivalent loss was caused to the Exchequer and during investigation, it was established that petitioner and his wife Neelam Devi have acquired huge immovable properties along with other accused without having any legal source and income during the period which are the proceeds of crime. Learned senior counsel further submits that against the alleged proceeds of crime to the tune of Rs.10,15,94,961/-, properties valued at Rs.4,21,85018 have been identified and have been provisionally attached vide PAO No.09/2018 dated 31.03.2018. A Complaint u/s 5(5) of PMLA, 2002 vide O.C. No.947/2018, dated 23.04.2018 was filed before the Hon'ble Adjudicating Authority under PMLA for confirmation of the said provisional Attachment Order. The Hon'ble Adjudicating Authority under PMLA confirmed the Provisional Attachment Order No.09/2018 vide order dated 05.09.2018, considering the fact that the petitioner has committed the scheduled offence, generated proceeds of crime and laundered them. It is further submitted that despite as sought vide summons issued under section 50 of the PMLA, the petitioner did not furnish the Stock Register, Bank Book, Cash Book, party wise Ledgers for the year 2011-12, 2012-13 and 2013-14. Further, he did not produce the name of parties, complete address and supporting documents in respect of those parties to whom payment of more than Rs.One Lakh during the financial year 2011-12, 2012-13 and 2013-14. This shows deliberate and conscious attempt to frustrate the proceedings under the PMLA, 2002. Firm M/s Pawapuri Rice Mill had received 190381 quintals of paddy for conversion into 129459 quintal of rice (68% of the paddy), he claimed to have returned certain quantity of rice to FCI but no supporting documents/receipts could be produced by him. Petitioner has purchased one immovable property in the name of his Company M/s Pawapuri Rice Mill Pvt. Ltd. in June, 2012 (crucial sale period after subject Agreement of December, 2011 with BSFCSC). The same is not reflected in the Balance Sheet of the said Company. Thus, a part of the Proceeds of crime has been invested in Immovable property to project the tainted money as untainted. During the period April, 2012 to 2015, i.e. after execution of agreement between M/s Pawapuri Rice Mill and BSFCSC, proceeds of crime in form of cash sales of rice were invested to the tune of Rs.52.18 Lacs in the name of Neelam Devi, who is the housewife of the petitioner and have no independent source of income. It is further submitted that during course of statement recorded u/s 50 of the PMLA, 2002, petitioner's wife Neelam Devi has stated that she is a house wife and has no independent source of income. All the immovable properties registered in her name were purchased by her husband out of his income. It is further argued that section 3 of the P.M.L. Act, 2002 state that "whatsoever directly or indirectly attempts to indulge or knowingly assist or knowingly is a party or is actually involved in any process or activity connected [proceed of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money laundering" whereas section 24 of P.M.L. Act is relating to burden of proof which says that "in the case of a person charged with the offence of money laundering u/s 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money laundering". Further, it is submitted that in Appeal No.527, 528, 529 of 2010 in the case of Radha Mohan Lakhotia & Mrs. Asha Lakhotia vs. Depute Director, Directorate of Enforcement before the Hon'ble High Court of Bombay, it has been observed that:

> ***"11. The question is whether section 5 can be invoked against a person who is not named as an accused in the commission of a scheduled offence. The proceeds of crime may be or can be in possession of "any person". Be it a person charged of having committed a scheduled offence "or otherwise". In the case of any other person in possession of proceeds of crime if it is also found that he has directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in any process or***

activity connected with the proceeds of crime and projecting it as untainted property, he shall be liable to be prosecuted for offence under section 3 r/w section 4 of the Act of 2002 in addition to suffering the action of attachment of the proceeds of crime in his possession. Attachment of proceeds of crime in possession of any person (other than the person charged of having committed a Scheduled Offence) will therefore be legitimate within the sweep of Section 5 of the Act of 2002."

Similar views have been held by Hon'ble High Court of Andhra Pradesh in WP No. 10765, 10769, 23166 of 2010 against Shri Ramalinga Raju vs UOI & ED, Hon'ble High Court of Madras in WA No.1625 of 2015 and WP No.24432/2014 in V.M. Ganesan vs. ED case."

Against the alleged proceeds of crime to the tune of Rs.10,15,94,961/- properties valued at Rs.4,21,85,018 have been identified and have been provisionally attached vide PAO No.09/2018 dated 31.03.2018. A complaint under section 5(5) of PMLA 2002 vide O.C. No.947/2018 dated 23.04.2018 was filed before the Hon'ble Adjudicating Authority under PMLA for confirmation of the provisional attachment order and Authority under PMLA confirmed the provisional Attachment order No.09/2018 vide order dated 05.09.2018 considering the fact that the petitioner has committed the scheduled offence, generated proceeds of crime and laundered them. Hence the property in the name of Neelam Devi, w/o Dinesh Prasad Gupta has rightly been identified for attachment.

Considering the aforesaid facts and circumstances, it is pertinent that the petitioner has not produced any document to show that he purchased the said land from own money. Petitioner along with his partner i.e. other accused persons are involved in concealment, possession, acquisition and using properties acquired out of proceeds of crime and projecting the same as untainted, as such, I am not inclined to grant him the privilege of anticipatory bail. The prayer for grant of anticipatory bail on his behalf is rejected.

This application is accordingly dismissed.

(Anjani Kumar Sharan, J)

pallavi/-

U		T	