IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.56273 of 2019

Arising Out of PS. Case No.-6 Year-2016 Thana- GOVERNMENT OFFICIAL COMP. District- Patna

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PANKAJ KUMAR Son of Parsuram Singh Resident of Village - Chandrapura, P.S.- Karaipal Surai, Dist.- Nalanda, Bihar 801302

... ... Petitioner/s

Versus

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

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Krishna Mohan Mishra, Adv.
For the BSFC	:	Mr.Shailendra Kumar Singh, Adv.
For the UOI	:	Mr.Dr.K.N.Singh, ASGI
		Mr.Amarjeet, J.C. to A.S.G.
		Mr.Sriram Krishna, JC to ASG
		Mr.Abhijeet Gautam, JC to ASG

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL ORDER

9 01-11-2022 Heard the parties.

The petitioners apprehend their arrest in connection with Special Trial (PMLA) No.-5 of 2018, registered for the offence punishable under section 4 of the Prevention of Money Laundering Act in special trial (PMLA) No.5 of 2018 whereby cognizance has been taken against the petitioner and other co-accused persons for the offence punishable u/s 4 of the PML Act in pursuance of the ECIR No.PTZO/06/2016 dated 27.12.2016.

Allegedly, the Assistant Director, Directorate of Enforcement, Government of Indian has filed a written complain wherein allegation has been made that the petitioner namely Pankaj Kumar had made agreement with the District Manager, the SFC, Nalanda for milling of rice on 19.02.2014. Accordingly, the SFC had supplied 24097.84 qt. of paddy for milling. As per agreement the petitioner has to supply 67 percent of rice which comes to 16136.95 qt. of rice. The petitioner, Pankaj Kumar however had supplied only 12388 qt. of rice and therefore, the accused had failed to deposit 3748.93 qt. of rice to the corporation. The district manager, SFC, Nalanda, therefore had lodged a FIR in Hilsa Police Station, Nalanda for recovery of price of rice of Rs.1,09,33,377.74/-.

Learned counsel for the petitioner argues that the petitioner is innocent and has not committed any offence as alleged by the complainant. It is argued that an agreement was made by the District Magistrate, SFC, Nalanda with the petitioner-accused on 09.02.014 wherein petitioner-accused put his signature and as per the said agreement, the Preeti Rice Mill was liable to mill the paddy and deposit resultant rice to the SFC, Nalanda. It is argued that after lodging the police case, a charge sheet was submitted and thereafter cognizance was taken by the learned C.J.M., Nalanda. Thereafter, Economic Offence Unit, Patna had filed application to E.D. for initiation of proceedings under P.M.L. Act and after registration of the case, Assistant Director (complainant) had made inquiry under PMLA and summoned the petitioner accused and then his statement u/s 50 of the PMLA was recorded wherein petitioner has stated clearly that he has his own source of income and filing return of income since long. It is further argued that the accused-petitioner has not purchased landed property after agreement. The description of landed property is at page-24 and 25 of the complaint petition. The details shows that all those landed property has been purchased up to 2010. Similarly there is a meager balance in the bank account and the petitioner has further purchased a tractor and truck which were purchased out of the loan received from the bank. It is further argued that the properties standing in the name of accused petitioner has been attached u/s 5 of PMLA which was confirmed by the Adjudicating Authority, New Delhi u/s 8 of the PMLA is under challenge before the tribunal which is pending. Learned counsel submits that the SFC however had not acted upon the agreement rather had followed the instruction/order issued by Development Commissioner, Bihar, Patna dated 07.12.2011 and District Collector, Nalanda dated 08.12.2011. The whole of the work of procurement of paddy, storage whereof, milling and supply of resultant rice to FCI were all made by following the order/instruction. The agreement (Annexure-2) were completely ignored. The petitioner had milled paddy but the corporation had lifted 12,388 qt of rice out of 16136.95 qt. The remaining quantity of 3748.93 rice were not lifted from the godown of the petitioner by the corporation. The petitioner had made several representation to the corporation to collect the rice from the godown but rice were not collected. It is stated that the responsibility of collection of rice was upon the opposite party no.3 not upon petitioner. Hence, petitioner had not committed offence. That, it is further pertinent to note here that the demand made by the SFC for supply of rice of 67 percent of paddies supplied, is also arbitrary. It has already stated above that the agreement was not acted upon by the opposite party no-3. The paddies were supplied at the mill for milling as per the instruction contained in annexure-3. The milling work were made in presence of officer of the SFC. The officer was camping at the mill premises round the clock. Day to day inspection of milling, stock of paddy and rice were being made by the Executive Magistrate, Block Development Officer and the Sub- Divisional Officer. The milling work was made in their presence and as per agreement/instruction the collection of rice were the duty of corporation and their officers by appointing their own transporter. The allegation made therefore that the petitioner had not supplied 67 percent of resultant rice is factually incorrect. It is further submitted the opposite party no.2 has himself accepted that no link of proceed of crime was found during the course of investigation. Offence under PML Act depends on the scheduled offence. In the schedule offence, petitioner has been granted bail. So far, the presumption under section 24 is concerned, the same is available at the stage of trial not at the stage of bail.

Learned senior counsel appearing on behalf of the E.D. as well as the counsel for the Bihar State Food Corporation opposed the bail application of the petitioner-accused by referring the complaint petitioner and thereby argued that petitioner has not appeared in spite of the summon issued to him reveals that 'proceeds of crime' have been siphoned off/concealed by the accused without leaving any trail to frustrate the proceedings under the PMLA. He further submits that investigation reveals that the petitioner Pankaj Kumar has maintained the following bank accounts-

a) Account number 2294002100001740 at Punjab National Bank, Khirubigha, Nalanda (Preeti Rice Mill)

b) Account number 2294000100014128 at Punjab

National Bank, Khirubigha, Nalanda (Pankaj Kumar)

c) Account number 133101504263 at ICICI Bank, Biharsharif (Pankaj Kumar)

d) Account number 71558100065523 at Madhya Bihar Gramin Bank, Diyawan, Nalanda (Pankaj Kumar)

e) Account number 50149713034 at Allahabad Bank, Hilsa (Preeti Rice Mill)

f) Account number 50141594024 at Allahabad Bank, Hilsa (Pankaj Kumar)

g) Account number 30324569793 at State Bank of India, Hilsa (Pankaj Kumar)

h) Account number 10160002691994 at Bandhan Bank, Hilsa, Biharsharif (Preeti Rice Mill)

i) Account number 000434001001433 Nalanda Central Co-operative Bank Ltd, Hilsa, Biharsharif (Pankaj Kumar).

That, scrutiny of these bank accounts reveals substantial deposits/transactions during the period after signing of the agreement (19.02.2014) and alleged defalcation of the rice which caused loss to exchequer, which is as under:-

F.Y.	2014-15	2015-16	2016-17	2017-18	Total
Punjab National Bank, Khirubigha, Nalanda, A/C No.2294002100001740	Rs.14,20,000	Rs.5,50,000	Rs.41,17,510	Rs.2,55,500	Rs.63,43,010
Punjab National Bank, Khirubigha, Nalanda, A/c No.2294000100014128	Rs.5,50,870	Rs.2,55,000	Rs.80,800	Rs.49 ,000	Rs.9,35,670

ICICI Bank, Biharsharif A/c 133101504263 (A/c opened on 31.07.2017)	A/c not opened	A/c not opened	A/c not opened	Rs.19,61,000	Rs.19,61,000
Madhya Bihar Gramin Bank, Diyawari, A/c No.71558100065523	Rs.10,000	--	--	A/c closed	Rs.10,000
Allahabad Bank, Hilsa- A/c No.50149713034	Rs.1,05,400	--	--	--	Rs.1,05,400
Allahabad Bank, Hilsa- A/c No.-50149714024	Rs.4,30,250	Rs.3,00,000	Rs.9,060	--	Rs.7,39,310
State Bank of India, Hilsa, A/c No.30324569793	--	--	--	Rs.15,92,000	Rs.15,92,000
Bandhan Bank, Hilsa, A/c No.-10160002691994(A/c opened on 05.04.2016)	A/c not opened	A/c not opened	Rs.37,30,740	Rs.55,842	Rs.37,86,582
Nalanda Central Co-operative Bank Ltd., Hilsa, Biharsharif A/c 000434001001433	Rs.16,19,250	--	Rs.15,64,026	Rs.6,18,975	Rs.38,02,251
Total					Rs.1,92,75,223

Analysis of the above mentioned accounts shows that substantial transaction in cash has taken place in these accounts after the date (19.02.2014) on which he had entered into agreement with Bihar State Food & Civil Supplies Corporation Ltd., District Office, Nalanda and subsequently failed to honour the terms of the agreement and misappropriated 3748.93 Qtls. of rice valued at Rs.1,09,33,377.74. During investigation under PMLA, Pankaj Kumar also attributed most of these cash deposits to sale of rice/foodgrains. Therefore, in light of the charge-sheet no 82/15 dated 31.07.2015 filed by PS Karaiparsurai (Nalanda, Bihar) and the letter 193/C of SP, EOU dated 29.09.2016 it is evident that a part of 'proceeds of crime' acquired through sale of misappropriated rice have been subsequently knowingly deposited in these accounts by Pankaj Kumar and have subsequently been withdrawn to conceal the proceeds of crime acquired by him and to frustrate the proceedings under the PMLA.

On the basis of the above FIR and charge-sheet, an investigation under PMLA was initiated by the Enforcement Directorate. The investigation under PMLA revealed that 'proceeds of crime' have been siphoned off/concealed by the accused without leaving any trail to frustrate the proceedings under the PMLA. In terms of the section 2(1)(u) of the PMLA, 2002 properties derived or obtained as a result of criminal activity relating to scheduled offence ***or property equivalent to the value thereof*** are “proceeds of crime”. Therefore, properties equal to the value of ‘proceeds of crime’ in terms of section 2(1)(u) of the PMLA are liable to confiscation. Thus, in absence of any property linked directly to ‘proceeds of crime’ other properties of the accused and his family members equal to value of the ‘proceeds of crime’ are liable to confiscation. Subsequently, a prosecution complaint (Special Trial No.05/18) dated 22.11.2018 was filed before the Hon’ble Court and which was taken cognizance on 22.11.2018. The Learned PMLA Court, Patna issued summons to the accused on 27.11.2018 to appear on 21.12.2018 but the accused did not appear before the Learned PMLA Court, Patna on 21.12.2018 till date.

This anticipatory bail petition is a deliberate attempt to frustrate the ongoing trial under PMLA. During the investigation under PMLA it was established that the petitioner is knowingly involved in acquisition, concealment, transfer of proceeds of crime and is knowingly involved in process or activity connected with proceeds of crime and projection of the same as untainted. Therefore, petitioner has committed the offence of money laundering, as defined u/s 3 of the PMLA, and punishable u/s 4 of the PMLA 2002. This is evident from following:-

"*(i) Vide letter no. 193/C, dated 29.09.2016, the Superintendent of Police, Economic Offence Unit, Bihar, Patna, has forwarded, FIR No. 44/15 and charge sheet no. 82/15, against Pankaj Kumar, Prop.-Preeti Rice Mill for contravention of sections 406, 409, 420 and 120(B) of Indian Penal Code. In the said letter, the Superintendent of Police, Economic Offence Unit, Bihar, Patna has also intimated that through the commission of these offences, Pankaj Kumar, Prop.-Preeti Rice Mill has acquired huge properties.*

(ii) Perusal of Charge-sheet No. 82/15 of P.S. Karaiparsurai (Nalanda), Bihar, filed against Pankaj Kumar reveals that Pankaj Kumar has knowingly caused huge loss to the exchequer by misappropriating rice which was to be deposited in the godown of BSFCSC after conversion from paddy. <u>He has been charged for alleged commission of the offence falling under sections 420 (cheating and dishonestly inducing delivery of property) & 120 B (criminal conspiracy) of the IPC, 1860 which are also scheduled (offences falling under Part A, paragraph 1 of the schedule to the PMLA, 2002</u>.

(iii) Pankaj Kumar has knowingly violated the deed of agreement signed by him. Perusal of the deed of agreement signed between him and the Manager BSFCSC, reveals that 67% FAQ CMR was to be returned to the BSFCSC after conversion from paddy given to them by BSFCSC. However, Pankaj Kumar has violated the agreement wilfully and did not return the required

quantity of rice to BSFCSC and hence, has knowingly acquired the proceeds of crime."

It is further submitted by learned senior counsel for the Enforcement Directorate that in response to summons, petitioner appeared before the Assistant Director, Enforcement Directorate, Patna and tendered his voluntary statement under the provisions of Sec. 50 (2) & (3) of the PMLA, 2002 wherein he admitted that he is an accused in FIR No. 44/15 and charge sheet no. 82/15 of P.S.- Karaiparsuray, Nalanda based on the written complaint made by Bihar State Food and Civil Supplies Corporation, Nalanda. He further admitted that he has not complied with the provisions of the Agreement with the BSFC, Nalanda according to which he had to return 67% rice in lieu of paddy received from the BSFC, Nalanda. He has returned an amount of Rs. 6,50,000/- to the BSFC, Nalanda from his PNB current a/c and Allahabad Bank, Hilsa cash credit accounts. However, he *failed to produce any documentary evidence in respect of his claims of returning some amount to BSFC*. During the investigation it became evident that Pankaj Kumar, Prop- Preeti Rice Mill was given 24085 Qtls. of paddy for conversion into 16136.95 Qtls. of rice (67% of paddy) which was to be deposited in the godown of BSFCSC by 31.12.2014 but he willfully deposited only 12388.02 Qtls. Of rice and misappropriated 3748.93 Qtls. of rice valued at Rs. 1,09,33,378/-. *This amount of Rs. 1,09,33,378/- is the proceeds of crime generated by Pankaj Kumar from the above-discussed scheduled offence viz. offence of criminal conspiracy, cheating and inducing delivery of property* which has been knowingly concealed and transferred by him.

Section 45 of the Act (as amended vide Finance Act 2018) reads as under:

45. Offences to be cognizable and no-bailable-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence (under this Act shall be released on bail or on his own bond unless-]

> *(1) the Public Prosecutor has been given an opportunity to oppose the application for such release; and*
>
> *(2) where the Public Prosecutor opposes the application, 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.*

In **ROHIT TANDON v/s DIRECTORATE OF ENFORCEMENT, CRIMINAL APPEAL NOS. 1878-1879**

OF 2017 (Arising out of SLP (Crl.) No. 6896-6897 of 2017)

"16. The argument though attractive at the first blush deserves to be rejected. In our opinion, the order dated 10th August, 2017 passed by the High Court directing interim release of the appellant was primarily on account of the illness of his mother. No more and no less. The other observations in the said order will have no bearing on the merits of the controversy and required to be reckoned whilst considering the prayer for grant of regular bail. For that, the appellant must succeed in overcoming the threshold of the rigors of Section 45 of the Act of 2002. Indubitably, the appellant having withdrawn the regular (second) bail application, the consideration of prayer for grant of interim release could not have been taken forward. Besides, in the backdrop of the opinion recorded by the Coordinate Bench of the High Court (in its decision dated 5th May, 2017) whilst considering the application for grant of regular bail, which was after filing of the initial complaint CC No.700/2017 (on 23rd February, 2017), was binding until reversed or a different view could be taken because of changed circumstances. Suffice it to

observe that indulgence shown to the appellant in terms of order dated 10th August, 2017 will be of no avail. In that, the facts such as the appellant never tried to evade the investigation or that he has suffered incarceration for over 71/2 months or that the charge-sheet has been filed in the predicate offence registered under FIR No.205/2016 or the factum of illness of the mother of the appellant or the observation that no definite reason has been assigned by the respondents for substantiating the allegation that the appellant would tamper with the evidence, may become relevant only if the threshold envisaged under section 45 of the Act of 2002 was to be fulfilled."

The sweep of Section 45 of the Act of 2002 is no more res integra. In a recent decision of this Court in the case of **Gautam Kundu Vs. Directorate of (Prevention of Money Enforcement Laundering Act), Government of India**, this Court has had an occasion to 29 and examine it in paragraphs 28, 30. It will be useful to advert to paragraphs 28 to 30 of this decision which read thus:

"28. Before dealing with the application for bail on merit, it is to be considered whether the provisions of

Section 45 of the PMLA are binding on the High Court while considering the application for bail under Section 439 of the Code of Criminal Procedure. There is no doubt that PMLA deals with the offence of money laundering and the Parliament has enacted this law as per commitment of the country to the United Nations General Assembly. PMLA is a special Parliament money-laundering. Section 5 of the Code of Criminal Procedure, 1973 clearly lays down that the provisions of the Code of Criminal Procedure will not affect any special statute or any other words, special statute will prevail over the general Criminal conflict. Statute enacted by the for dealing with local law In the provisions of any provisions of the Code of Procedure in Case of any conflict.

29. Section 45 of the PMLA starts with a non obstante clause which indicates that the provisions laid down in Section 45 of the PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. Section 45 of the PMLA imposes following two conditions for grant of bail to any person accused of an offence punishable for a term of imprisonment of more than three years under

Part-A of the Schedule of the PMLA:

> *(i) That the prosecutor must be given an opportunity to oppose the application for bail; and*
> *(ii) That the Court must be satisfied that there are reasonable grounds for believing that the accused person is not guilty of such offence and that he is not likely to commit any offence while on bail.*

30. The conditions specified under Section 45 of the PMLA are mandatory and needs to be complied with which is further strengthened by the provisions of Section 65 and also Section 71 of the PMLA. Section 65 requires that the provisions of Cr.P.C. shall apply in so far as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of the PMLA shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PMLA has an overriding effect and the provisions of Cr.P.C. would apply only if they are not inconsistent with the provisions of this Act. Therefore, the conditions enumerated in Section 45 of PMLA will have to be complied with even in respect of an application for bail made under section 439 of Cr.P.C. ***That coupled with the provisions of Section 24 provides that unless the***

contrary is proved, the Authority or the Court shall presume that proceeds of crime are involved in money laundering and the burden to prove that the proceeds of crime are not involved, lies on the appellant."

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.*

Heard, both sides and perused the original case record as well as other relevant documents annexed with the record.

Allegation is made in para-1 to 29 of the complaint petitioner that accused misappropriated 3748.93 qtls. Of rice which was to be deposited in the godown of BSFCSC (Bihar State Food and Civil Supplies Corporation) in lieu of the paddy given to them for conversion into rice (67% of paddy) thereby causing loss of Rs.1,09,33,378/- to the exchequer. This amount of loss of Rs.1,09,33,378/- caused to the exchequer is the proceeds of crime generated by the accused and projecting it as untainted against the petitioner. He is also involved in concealment, possession and acquisition or using the property acquired of the proceeds of crime and projecting the same has untainted. When the Court queried to the petitioner regarding the statement of the Bank account in the complaint at para-10.4, he failed to explain the details of the Bank account transaction in cash between 2014 to 2015 to 2017-18. On the aforesaid query, he only stated in his deposition dated 05.12.2017 that he was earning income since 1998-99 and onward as he has agricultural income and also operating PDS shop. In 2014-15, Assessment year 2015-16, the return of income filed to the income tax department demonstrate that he had disclosed total income of Rs.485813/-. The whole of the investment or deposit therefore is covered by the income generated from legal source but no any documentary evidence was filed by learned counsel for the petitioner.

Considering the above mentioned facts and circumstances, I am not inclined to enlarge the petitioner on bail. The prayer for bail on his behalf is rejected.

Accordingly, this application stands dismissed.

(Anjani Kumar Sharan, J)

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