IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16438 of 2021

Arising Out of PS. Case No.-8 Year-2018 Thana- GOVERNMENT OFFICIAL COMP. District- Patna

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Ramesh Kumar, son of Devendra Thakur Permanent Resident Of Village- Majhauli Pachdahi, P.S.- Sakra, Via- Silout, Muzaffarpur- 843119. Presently Residing At Of House No. Wz-34a, Dada Chatri Wali Marg, Raj Nagar Part-I, Palam Clony, Palam Village, P.S.- Palam, South West Delhi, Earlier Resided At H. No. - Rz-686, F-16, Near Nirankari Hawan, Raj Nagar Part-I, Palam Clony, Palam Village, P.S.- Palam, South West Delhi.

... ... Petitioner/s

Versus

The Union Of India, through Asst. Director, Enforcement Directorate, 1st Floor, Chandpura Place, Bank Road, West Gandhi Maidan, Patna- 800001.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ashhar Mustafa, Advocate
For the Opposite Party/s : Mr. K.N. Singh (Additional S.G)
Mr. Manoj Kumar Singh, J.C to A.S.G

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR

CAV ORDER

13 19-07-2022 Heard the parties.

2. The petitioner is apprehending his arrest in a complaint case bearing Complaint Case No. 06 of 20020 filed under Section 45 of the Prevention of Money Laundering Act, 2002, arising out of Special Trial No. (PMLA) 06 of 2020 wherein cognizance has been taken against the petitioner and other co-accused persons for the offence punishable under Section 4 of the P.M.L.A in pursuance of ECIR No. PTZO/08/2018.

3. The prosecution case in brief is that the informant being Assistant Enforcement Directorate, Government of India has filed a complaint bearing Complaint Case No. 6 of 2020 before the Court of learned Special Judge, PMLA, Patna with an accusation that principal accused Brajesh Thakur, *de facto* owner of the NGO namely *Sewa Sankalp Ewam Vikas Samiti*, in connivance with other accused persons has used this NGO as a tool for money laundering and received huge donations/funds from the Government and other sources which have been siphoned off and concealed for acquiring properties. It is alleged against this petitioner that being *Secretary* of *Seva Sankalp Ewam Vikas Samiti,* in collusion with Brajesh Thakur, he assisted him by being the signatory to the execution deed whereby the acquisition of the properties were done in the name of the NGO, which was used as a tool for money laundering and receiving funds from the Government and others, ostensibly in the name of welfare of girl

child, but in reality, for the personal gains of the principal accused Brajesh Thakur. The petitioner has appeared as a witness in the registered document bearing No. 15457 dated 22.11.2005, executed in the name of Dr. Asha, wife of Brajesh Thakur and has resided over the same property without paying any rent.

4. On the basis of the aforesaid inquiry, investigation carried on under ECIR No. PTZO/08/2018, a complaint was filed under Section 45 of the Prevention of Money Laundering Act, 2002 which came to be registered as Special Trial No. (PMLA) 06 of 2020 before the Court of Special Judge, PMLA, Patna for the offences punishable under Section 4 of the PMLA, 2002.

5. Being aggrieved and dissatisfied with the registration of Complaint Case No. 6 of 2020 and consequent rejection of the anticipatory bail by the learned Court below, the petitioner has approached this Hon'ble Court for pre-arrest bail.

6. It is submitted by learned counsel for the

petitioner that petitioner has been falsely implicated in the present case due to misrepresentation of facts. The petitioner is simply paying the price of being cousin of principal accused Brajesh Thakur. It is the case of the prosecution that Brajesh Thakur was the *de facto* owner of *Sewa Sankalp Ewam Vikas Samiti* and Balika Grih and the complaint itself does not suggest that petitioner was even remotely involved in the affairs of the NGO.

7. After completing studies, the petitioner started his job at Merino Products Limited and has been continuously working in the said company till today which suggests that petitioner is a working professional who runs his livelihood with the monthly salary transmitted in his bank account. He has no other source of income which would also transpire from his bank account details and Income Tax Returns. In his entire career, the petitioner has not acquired any property, except a flat at Delhi and a Wagon-R car which were brought by the petitioner through bank loans. Although,

the loan of the car is already settled but the EMI of home loan has been continuously deducting from the account of the petitioner since 2011.

8. Learned counsel for the petitioner further submits that in the long list of illegal acquired properties, bank accounts, attached properties as detailed in the complaint petition, none related to the petitioner. All such illegal properties were either acquired by Brajesh Thakur, his wife, sons and mother. The bank accounts which were used for transactions were also in the names of the said persons.

9. In the registration document of *Seva Sankalp Evam Vikas Samiti* dated 08.04.1987, the petitioner has been described as *Secretary* of the said NGO, but at the relevant time, the petitioner used to stay at Muzaffarpur for his school education under the guardianship of father of principal accused Brajesh Thakur. Hence, it is clear that the name of the petitioner was introduced as *Secretary* of the NGO without his

knowledge or consent.

10. The petitioner never participated in execution of Gift Deed in the year 2002 in the capacity of *Secretary* of the NGO as the signatures marked therein in the name of the petitioner are apparently forged and distinct from the original signature of the petitioner.

11. The petitioner has cooperated in the investigation and appeared whenever he was required by the Investigating Agency.

12. Learned counsel appearing on behalf of Union of India has submitted that as per the registration document of NGO *Sewa Sankalp Ewam Vikas Samiti*, dated 08.04.987, the petitioner has been described as the *Secretary* of *Sewa Sankalp Ewam Vikas Samiti*. Huge funds were transferred through the bank accounts of the NGO directly to the bank accounts of Brajesh Thakur and his other family members for their personal use. This makes it clear that Brajesh Thakur and his

other family members have concealed, transferred and siphoned off the funds provided by the Government and other sources for the welfare of the children. Huge funds were also deposited in the bank accounts of Brajesh Thakur and his other family members but during their statements under Section 50 of PMLA, Brajesh Thakur and his other family members completely failed to explain the source of this huge cash. Hence, being the Secretary of *Sewa Sankalp Ewam Vikas Samiti*, this petitioner, cousin of Brajesh Thakur was knowingly involved in acquisition, concealment, transfer of proceeds of crime and is knowingly involved in process or activity connected with proceeds of crime. Therefore, the petitioner has committed the offence of money laundering, as defined under Section 3 of the PMLA and punishable under Section 4 of the PMLA, 2002.

Section 3 of the PMLA reads as Under:-

> *Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in*

any process or activity connected [proceeds 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.

Explanation-For the removal of doubts, it is hereby clarified that,-

1. a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:- (a) concealment; or (b) possession; or (c) acquisition; or (d) use; or (e) projecting as untainted property; or (f) claiming as untainted property, in any manner whatsoever.

2. The process or activity connected with proceeds of crime is continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any *manner whatsoever.*

13. Mr. Singh further contended that the petitioner during his statement under Section 50(2) & (3) of PMLA has stated that he is not the *Secretary* of *Sewa Sankalp Ewam Vikas Samiti* and working in a private form in Delhi but during investigation under PMLA, it revealed that sale deed No. 18412/2012 has been executed in the name of *Sewa Sankalp Ewam Vikas Samiti* through the petitioner as *Secretary* of the said *Samiti* and being the *Secretary*, he in connivance with Brajesh Thakur has formed this NGO and used this NGO as a tool for money laundering by receiving huge donations/funds from the government and other sources and further siphoned off and concealed the same and frustrate the proceedings under PMLA. Hence, his denial of any involvement with *Sewa Sankalp Ewam Vikas Samiti* and misuse of his personal documents is not justifiable and a false claim to mislead the investigation.

14. The petitioner further claims that he has been

residing in the building owned by Brajesh Thakur at Delhi on rent since 2007 and he does not know the source of funds for acquisition of the plot and construction of multi-storey building on the same plot, but during investigation, it was found that this petitioner appeared as a witness in the registered document no. 15457 dated 22.11.2005 executed in the name of Dr. Asha, wife of Brajesh Thakur and resided in the house constructed over the same plot without paying any rent. As the property has been acquired out of proceeds of crime, hence, it is logical to conclude that this petitioner, in connivance with Brajesh Thakur was consciously involved in money laundering.

15. It is also contended by learned Additional Solicitor General that the petitioner claims that principal accused Brajesh Thakur took his name and signature whenever required without his knowledge and consent but petitioner never lodge any complaint against Brajesh Thakur before any law enforcement agency regarding

misusing of name and signature which suggests that petitioner was actively involved with Brajesh Thakur in acquisition, concealment, transfer of proceeds of crime.

16. In this scenario, finding force in the submissions of Mr. K.N. Singh, learned A.S.G, this Court is not inclined to enlarge the petitioner on anticipatory bail.

17. The prayer for grant of anticipatory bail to the petitioner stands dismissed.

18. The petitioner is at liberty to surrender before learned Court below and file an application for regular bail. As and when the application for regular bail is filed, the same may be considered by the learned Trial Court on its own merits and in accordance with law without being prejudiced by any of the observations made in this order.

(Sunil Kumar Panwar, J)

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