IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.68179 of 2021
Arising Out of PS. Case No.-8 Year-2018 Thana- GOVERNMENT OFFICIAL COMP. District- Patna

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Manorama Devi, wife of late Radha Mohan Thakur, resident of Village- Kalyani Sahoo Road, P.S.- Town Thana, Distt.- Muzaffarpur.

... ... Petitioner/s

Versus

1. The Union of India through the Director, Directorate of Enforcement, Govt. of India, New Delhi. Govt. of India.
2. The Director, Directorate of Enforcement Govt. of India, New Delhi. Govt. of India.
3. The Assistant Director, Directorate of Enforcement Govt. of India, 1st. Floor, Chandpura, Place Bank Road, West Gandhi Maidan, Patna, Bihar.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Adv Mr. Sumit Kumar Jha, Adv Mr. Shadab Akhtar, Adv Mr. Sumit Kumar, Adv Ms. Riya Giri, Adv
For the Union of India	:	Mr. Dr. K.N.Singh, Sr. Adv (A.S.G.I) Mr. Manoj Kumar, C.G.C Mr. Sriram Krishna, JC to ASG

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL ORDER

7 13-09-2022 Heard the parties.

2. The petitioner is apprehending her arrest in connection with Special Case (PMLA) filed under Section 45 of the Prevention of Money Laundering Act, 2002, arising out of ECIR No. PTZO/08/2018, wherein cognizance has been taken for the offences punishable under Section 4 of the Prevention of Money Laundering Act.

3. The prosecution case in brief is that the informant being Assistant Director, Enforcement Directorate, Government of India has filed a complaint 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 the petitioner being mother of main accused Brajesh Thakur has received total amount of Rs. 47,14,458/- in her bank accounts from the bank accounts of *Sewa Sankalp Ewam Vikas Samiti* which establishes that funds received by the NGO have been laundered through the bank account of this petitioner. It is further alleged that the petitioner created fixed deposits in her bank account in DCCB, Samastipur out of illegal and unaccounted cash and loans were taken

against these FDs and utilized the same for purchase of vehicles. However, the repayment of loans has been made through cash for which no supporting documents regarding cash utilized for creation of these FDs and utilized for repayment of loans have been submitted by the petitioner. Thus, Brajesh Thakur and his family members have diverted and transferred the funds of the NGO for personal use and huge properties have been acquired through cash and the petitioner being mother of Brajesh Thakur is knowingly involved in acquisition, concealment, transfer of proceeds of crime and knowingly involved in process or activity connected with proceeds of crime and projection of the same as untainted.

4. During investigation, it has also been established that the petitioner being mother of main accused Brajesh Thakur has acquired huge proceeds of crime generated through defalcation of the Government aid received by the NGO *Sewa Sankalp Ewam Vikas*

Samiti and its sister concerns and the same has been placed in the various bank accounts in her name and after placement of the said proceeds of crime, it has been layered in the form of transferring into the different bank accounts and after layering of the proceeds of crime, it has been integrated in the form of purchasing of the movable properties in her name.

5. Mr. Y.V. Giri, learned senior advocate appearing on behalf of the petitioner has submitted that petitioner was not associated with the NGO *Sewa Sankalp Ewam Vikas Samiti*. The petitioner is an old lady aged about 70 years who was retired from the Health Department, Muzaffarpur. The petitioner has been implicated in this case only because she is the mother of the main accused Brajesh Thakur. There is no material available on record against the petitioner to suggest any link that petitioner has committed any of the scheduled offence as provided in the PMLA, 2002, rather the allegation against the petitioner in linking her in omitting

the schedule offence are false, baseless, vexatious, vague, lacks substance.

6. Mr. Giri, learned senior advocate further pointed out that mere transfer of money from the account of the NGO in the account of the petitioner does not itself constitute offence under Section 3 or any of the provisions of the PMLA Act, 2002, as to attract the essentials of any of the offences as prescribed under the provisions of PMLA Act, it is essential to be shown that the petitioner was consciously and knowingly involved in any of the activities connected with the proceeds of crime. However, in the present case, the prosecution has failed to produce any legal evidence to show that petitioner has committed any act knowingly or with knowledge which will come under the preview of proceeds of crime. On the other hand, the prosecution have admitted in its complaint that main accused Brajesh Thakur was controlling/managing the account of the petitioner.

7. Section 3 of the PMLA reads as under:-

"Offence of money-laundering-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 with the [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,-

(i) 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.

(ii) The process or activity connected with proceeds of crime is a 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.

8. Mr. Giri has further pointed out that the present complaint has been filed on the basis of three FIRs viz (1) Mahila P.S. Case No. 33 of 2018 (2) Mahila P.S. Case No. 40 of 2018 and (3) CBI, SPE, SCB Patna Case No. RC0922018S0001-RCI(s)/ 2018/ CBI/ SCB/ Patna. However, in the aforesaid cases, the petitioner has not been made accused nor the name of the petitioner has been disclosed in the charge-sheet, which itself is sufficient to establish this fact that petitioner is innocent and she has falsely been implicated in the present case.

9. Mr. Y.V. Giri, learned senior advocate also submitted that the alleged proceeds of crime valued Rs. 91,32,272/- attributed in the complaint against the petitioner is a legitimate property and in no manner

relates to any scheduled offence under PMLA Act as the petitioner was a government servant and was working in the Health Department and she retired in the year 2007 after successfully completing her service without any complaint. So far as the immovable property of the petitioner is concerned, the said property has been purchased by the petitioner with the help of her father-in-law way back in the year 1988 and is ancestral property. However, the Authority, while calculating the consideration of the property have calculated the property on the basis of present circle rate, completely overlooking the fact that the property has been purchased in the year 1988. So far as purchase of movable property i.e. vehicles are concerned, it has been purchased by the petitioner from her own earnings and also for purchasing those properties/vehicles, the petitioner had taken loan from the bank. Moreover, the amount alleged against the petitioner regarding proceeds of crime is less than 1,00,00,000/-(rupees one crore), therefore, the petitioner may be granted the benefits of anticipatory bail in view of the proviso of Section 45 of the PMLA, 2002.

10. Mr. Y.V. Giri, learned senior advocate has placed reliance on a decision of this Hon'ble Court in the case of *Most. Ahilya Devi versus The State of Bihar reported in (2020) 4 BLJ 1*, wherein, learned Single Judge, after considering various decisions of Hon'ble Apex Court and High Courts including the decision of Hon'ble Apex Court in *Nikesh Tarachand Shah versus Union of India and Another, reported in (2018) 11 SCC 1* and the amendment in Section 45 of the PMLA Act through Finance Act, 2018, has categorically held that amendment in sub-section 1 of section 45 of the Act introduced after Supreme Court's decision in the case of *Nikesh Tarachandra Shah(supra)* does not have the effect of reviving the twin conditions for grant of bail, which have been declared ultra-virus Articles 14 and 21 of the Constitution of India.

11. Mr. Giri, further argued that petitioner is a senior citizen having 70 years of age and at this age, she finds it difficult to walk without help of others and iron rod has been fixed in knee when she had suffered dislocation of bone and thereafter she is under continuous treatment. Moreover, even Section 45 of the PMLA Act will not be a bar for granting bail to the petitioner as the case of the petitioner is covered by the proviso of Section 45 of the Act since the petitioner is a woman and the amount alleged against the petitioner for proceeds of crime as stated in the complaint is less than one crore.

12. Mr. Dr. K.N. Singh, learned Additional Solicitor General, appearing on behalf of the Union of India has vehemently opposed the prayer for anticipatory bail of the petitioner and submitted that petitioner Manorma Devi who is mother of main accused Brajesh Thakur is knowingly involved in acquisition, concealment, transfer of proceeds of crime and

projection of the same as untainted. During investigation under PMLA, it has been found that this petitioner had received total amount of Rs. 47,14,458/- in her bank accounts from the bank accounts of *Sewa Sankalp Ewam Vikas Samiti* which establishes that funds received by the NGO have been laundered through the bank accounts of petitioner Manorma Devi. Mr. Singh further contended that this petitioner created fixed deposits in her bank account in DCCB, Samastipur out of illegal and unaccounted cash and loans were taken against these FDs and utilized for purchase of vehicles. However, the repayment of loans has been made through cash but no supporting documents regarding cash utilized for creation of these FDs and utilized for repayment of loans have been submitted by the petitioner Manorma Devi which makes it evident that she has deliberately concealed proceeds of crime generated by her son Brajesh Thakur in these investments.

13. From a bare perusal of Section 45 of the

Act, it is established that petitioner cannot claim anticipatory bail as above mentioned eventualities depends on the discretion of the learned Special Court and learned Special Court has rightly exercised its discretion and in the facts of the case has rejected the anticipatory bail of the petitioner as money laundering is an economic offence of grave nature and assisted the main accused in laundering proceeds of crime generated from criminal activities relating to scheduled offence.

14. In *Shyam Sundar Bajaj versus Union of India represented by Assistant Director (Criminal Miscellaneous No. 64175 of 2019 dated 11.03.2022)*, the Hon'ble Patna High Court has refused to grant anticipatory bail and held that twin conditions have to be considered at the time of grant of anticipatory bail. The Court did not grant anticipatory bail in the light of the gravity of the offence of money laundering, facts of the case which reveals his complicity and the fact that trial could not proceed because of his non-appearance. The

Hon'ble Court held as follows:-

"17. After considering the submissions of the parties, in my opinion, the offence of money laundering damages the economic and financial system of the country and it can put the economy on hold or can derail it. It is more serious than the murder. The money laundering is not only used for the drug trading but also for terrorist activities and such crime affect the integrity and sovereignty of the country.

15. It is submitted that the reliance placed on *Most. Ahilya Devi versus The State of Bihar reported in (2020) 4 BLJ 1* is misplaced.

16. The Hon'ble Apex Court in the case of *Vijay Madanlal Choudhary & Ors versus Union of India & Ors [SLP(Crl.) 4634/2014 dt. 27.07.2022)* has held that expression and occurring in Section 3 has to as per to give full play to Section 3 of PMLA. The relevant paragraph is extracted as under:-

"187. In light of the above analysis, we now proceed to summarise our conclusion on seminal points in issue in

the following terms:-

(v)(a) Section 3 of the 2002 Act has a wider reach and captures every process and activity, direct or indirect, in dealing with the proceeds of crime and is not limited to the happening of the final act of integration of tainted property in the formal economy. The Explanation inserted to Section 3 by way of amendment of 2019 does not expand the purport of Section 3 but is only clarificatory in nature. It clarifies the work "and" preceding the expression projecting or claiming as "or"; and being a clarificatory amendment, it would make no difference even if it is introduced by way of Finance Act or otherwise.

(b) Independent of the above, we are clearly of the view that the expression "and" occurring in Section 3 has to be construed as "or", to give full play to the said provision so as to include "every" process or activity indulged into by anyone. Projecting or claiming the property as untainted property would constitute an offence of money-laundering on its own, being an

independent process or activity.

(xiii)(a) The reasons which weighed with this Court in Nikesh Tarachand Shah for declaring the twin conditions in Section 45(1) of the 2002 Act, as it stood at the relevant time, as unconstitutional in no way obliterated the provision from the statute book; and it was open to the Parliament to cure the defect noted by this Court so as to revive the same provision in the existing form.

(b) We are unable to agree with the observations in Nikesh Tarachand Shah distinguishing the enunciation of the Constitution Bench decision in Kartar Singh and other observations suggestive of doubting the perception of Parliament in regard to the seriousness of the offence of money-laundering, including about it posing serious threat to the sovereignty and integrity of the country."

17. It would be just proper to mention appropriate observation which was observed by this Hon'ble Court in the case of *Most. Ahilya Devi versus The State of Bihar reported in (2020) 4 BLJ 1*. The

relevant paragraphs are quoted hereunder:-

> *"3. Subsequent to the Supreme Court's decision, in case of Nikesh Tarachand Shah (supra), certain amendments were made in various provisions of the Act including Section 45(1) of the Act. The amending provision, which is relevant for the issue which has arisen in the present matter, reads thus:-*
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> *"For the words 'punishable for a term of imprisonment of more than three years under Part A of the Schedule; the words 'under this Act' shall be substituted."*
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> *4. Evincibly, consequent upon the aforesaid amendment through Finance Act, 2018, Section 45 of the Act, as it now stands reads thus:-*
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> *"Section 45.-Offences to be cognizable and non-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:-*

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) 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;

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or in infirm, or is accused either on his own or along with other co-accused of money laundering a sum of less than one crore rupees may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under Section 4 except upon a complaint in writing made by-

(i) the Director; or

(ii) any officer of the Central Government or State Government authorized in writing in this behalf by the Central Government by a general or

special order made in this behalf by that Government.

[(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorized, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.].

(2) The limitation on granting of bail specified in clause(b) of sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail."

7. It is eminent that clause (ii) of sub-Section (1) of Section 45 of the Act places two conditions for release of a person accused of an offence under the Act, on bail, if a Public Prosecutor opposes the bail application, namely; the Court is satisfied (i) that there are reasonable grounds for believing that the accused is not guilty of such offence and *(ii) that he is not likely to commit any offence while on bail. Whether substitution of the words 'under this Act' in place of the words 'punishable for a term of imprisonment of more than three years under Part A of the Schedule' in Section 45 (1) of the Act, has the impact of meeting with the reasonings and logic incorporated and discussed by the Supreme Court in case of Nikesh Tarachand Shah (supra) for declaring the Clause (ii) of Sub-section (1) of Section 45 of the Act ultra vires and, therefore, Clause (ii) of sub-Section (1) of Section 45 of the Act is in present form should be treated to be valid, despite Supreme Court's decision in case of Nikesh Tarachand Shah (supra) is the central question to be gone into the present application."*

18. This Court is of the considered view that petitioner Manorma Devi being mother of main accused Brajesh Thakur has received total amount of Rs. 47,14,458/- in her bank accounts from the bank accounts of *Sewa Sankalp Ewam Vikas Samiti* which

establishes that funds received by the NGO have been laundered through the bank account of this petitioner. The petitioner created fixed deposits in her bank account in DCCB, Samastipur out of illegal and unaccounted cash and loans were taken against these FDs and utilized the same for purchase of vehicles. However, the repayment of loans has been made through cash for which no supporting documents regarding cash utilized for creation of these FDs and utilized for repayment of loans were submitted by the petitioner which makes it clear that she has deliberately concealed proceeds of crime generated by her son Brajesh Thakur in these investments in an attempt to frustrate the proceedings under the PMLA. Thus, the petitioner assisted Brajesh Thakur in acquiring properties and claiming them as untainted.

19. In this scenario, finding force in the submissions of Mr. Dr. K.N. Singh, learned Additional Solicitor General, this Court is not inclined to enlarge the

petitioner on anticipatory bail.

20. The prayer for grant of anticipatory bail to the petitioner stands rejected.

21. The petitioner is a liberty to surrender before learned Court below and file appropriate application for regular bail. As and when the application for regular bail is filed, the same may be considered by the learned Court below 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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