IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71472 of 2021

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

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PURUSHOTTAM JAIN Son of Ram Das Prasad Resident of Village - Berthu , P.S.- Karaiparsurai, Distt.- 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, Chandpur Palace, Bank Road, West Gandhi Maidan, Patna.800001
3. District 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, Advocate
For the Opposite Party/s :	Mr.Dr. K.N. Singh, ASGI
	Mr.Manoj Kumar Singh, CGC
	Mr.Amarjeet, JC to ASG
	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 3 and 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 had made agreement with the District Manager, SFC, Nalanda for milling of rice. Accordingly, the SFC had supplied 12380 qt. of paddy for milling. As per agreement the petitioner was to supply 67 percent of rice which comes to 8294.60 qt. of rice. The petitioner, however had supplied only 3994.92 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 lodged a FIR in Hilsa Police Station, Nalanda for recovery of price of rice of Rs.1,40,05,466/-.

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 13.02.2014 wherein petitioner-accused put his signature and as per the said agreement, the Ramdas Agro Industry 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 stated that he has been made accused in FIR No.44/15 based on the written complaint made by BSFCSC, Nalanda on the charges of misappropriation of rice. It is further argued that the accused-petitioner has a purchased a land before the date of agreement. Second property was purchased by the petitioner after withdrawing cash from cooperative bank, Hilsa. The account statement demonstrate that the petitioner withdrew Rs.50,000/- and Rs.40,000/- on 15.04.2015 and 18.04.2015 respectively and paid to the vendor. The petitioner owns and possess lands as inherited property. The petitioner had sold out agriculture produce and deposited cash in the account. He was also running rice mill. 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. It is submitted that no offence u/s 3 of the PMLA is made out against the petitioner. In the complain petition, it has been stated that the petitioner has failed to substantiate the claim of returning of stipulated quantity of rice, therefore, the petitioner had committed schedule offence of cheating and dishonestly inducing delivery of properties to the extent of the amount 1.40 crore. It is alleged that a part of proceeds of crime acquired through sale of misappropriated rice has been invested in immovable property and remaining has been siphoned off.

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 was completely ignored. The petitioner had milled paddy but the corporation had lifted 3994.92 qt of rice out of 8294.60 qt. The remaining quantity of 4799.68 qtls. of 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.2 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-2. 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 that 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 Purushottam Jain has maintained the following bank accounts-

a) Account number 50100004137668 at HDFC Bank Branch-Hilsa;

b) Account number 50200005596477 at HDFC Bank Branch-Hilsa;

c) Account number 50200006979266 at HDFC Bank Branch-Hilsa (Ramdas Agro Industries).

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 has caused loss to exchequer, which is as under:-

F.Y.	HDFC-Hilsa Account no.-50100004137668 (A/c opened on	HDFC-Hilsa, Account No:50200005596477 (A/c Opened on	HDFC-Hilsa, Account No:50200006979266 (A/c opened on	Total

	15.02.2014)	16.05.2014)	06.08.2014)	
2013-14 (Feb’14-Mar’14)	Rs.7,78,000	A/c Not opened	A/c Not opened	Rs.7,78,000
2014-15	Rs.13,93,353	Rs.3,50,000	Rs.51,000	Rs,17,94,353
2015-16	–	Rs.1,17,507	Dormant	Rs.1,17,507
2016-17	Rs.6,50,084	Dormant	Dormant	Rs.6,50,084
2017-18	Dormant	Dormant	Closed	
Total				Rs.33,39,944

Analysis of the above mentioned accounts shows that substantial transaction in cash has taken place in these accounts after the date (13.02.2014) 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 4799.68 Qtls. of rice valued at Rs.1,40,05,466. During investigation under PMLA, petitioner did not submit any evidence to explain these cash transactions and failed to discharge the ‘burden of proof’ cast upon him under section 24 of PMLA. Therefore, in light of the charge-sheet no.82/15 dated 31.07.2015 filed by PS Karaiparsurai (Nalanad, Bihar) and the letter 192/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 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 23.01.2018 for his appearance but the accused did not appear before the Learned PMLA Court, Patna 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. 192/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 Purushottam Jain, 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, petitioner has acquired huge properties.*
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> *(ii) Perusal of Charge-sheet No. 82/15 of P.S. Karaiparsurai (Nalanda), Bihar, filed against Purushottam Jain reveals that Purushottam Jain 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. 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.

(iii) Purushottam Jain 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, petitioner 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 BSFCSC, Nalanda according to which he had to return 67% rice in lieu of paddy received from the BSFC, Nalanda and also admitted non-payment of Rs.1.40 crore to the BSFCSC.

However, he failed to produce any documentary evidence and did not appear before investigation. During the investigation it became evident that Purushottam Jain, Prop-Ramdas Agro Industry was given 12380 Qtls. of paddy for conversion into 8294.60 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 3994.92 Qtls. Of rice and misappropriated 4799.68 Qtls. of rice valued at Rs. 1,40,05,466/-. *This amount of Rs. 1,40,05,466/- is the proceeds of crime generated by Purushottam Jain, 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 the complaint petition that petitioner misappropriated 4799.68 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.1,40,05,466/- to the exchequer. This amount of loss of Rs.1,40,05,466/- caused to the exchequer is the 'proceeds of crime' generated by the petitioner 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-7.4, he failed to explain the details of the Bank account transaction in cash. In the Assessment year 2015-16, the return of income filed to the income tax department demonstrate that he had disclosed total income of Rs.519822/-. 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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