IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.64175 of 2019

Arising Out of PS. Case No.-5 Year-2016 Thana- GOVERNMENT OFFICIAL COMP. District- Patna

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Shyam Sunder Bajaj, Son of Late Jugal Kishore Bajaj, Resident of Karnika Apartment, 20-Rabindra Sarani, Bally (M), Howrah, West Bengal and Proprietor of M/s Shivam Agency 55/1B, Strand Road, Kolkata, P.S-Jora Bagan, District-Kolkata, State-West Bengal, PIN-700 006.

... ... Petitioner/s

Versus

The Union of India, through the Assistant Director (P.M.L.A.) Enforcement Directorate, Government of India, 1st Floor, Chandrapura Place, Bank Road, West Gandhi Maidan, Patna-800001.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ramesh Kumar Agrawal, Advocate
		Mr. Kumar Ravish, Advocate
For the Opposite Party/s	:	Dr. K.N. Singh, Add. S.G.I
		Mr. Anshay Bahadur Mathur, CGC

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

CAV ORDER

12 11-03-2022

Heard learned counsel for the parties.

2. The petitioner apprehends his arrest in connection with 1st Supplementary Complaint Case in Special Trial (PMLA)-11 of 2018 [ECIR No. PTZO/05/2016 dated 26.12.2016 leading to institution of Complaint No.2 of 2018 dated 18.07.2018] instituted under Section 45 of the Prevention of Money Laundering Act, 2002 (PMLA for short) for commission of offence under Section 3, which is punishable under Section 4 of the PMLA Act.

3. The brief facts of the prosecution case are that

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two F.I.R., i.e., Gaya Civil Line P.S. Case No.339/2016 and Gaya Civil Line P.S. Case No.340/2016 for the offences under Sections 419, 420, 467, 468, 469, 471 and 120B of the Indian Penal Code have been registered. According to the first F.I.R., i.e., 339/18 the complainant Shri Shashi Kumar alleged that two bank A/c Nos.447520110000729 and 447520110000731 held in the name of his brothers, namely, Shri Rajnish Kumar and Shri Shailesh Kumar and one bank A/c No.447520110000742 in the name of his firm M/s Shiva Agro Enterprises held with Bank of India, GB Road, Gaya were misutilized in connivance with the Bank Officials, in as much as, huge amount of cash was deposited and transferred to other accounts without their knowledge and consent. Whereas according to the second F.I.R., i.e., 340/2016 the complainant Rajesh Kumar also alleged that Bank A/c. Nos.447520110000726 and 447520110000725 held in his name and in the name of his wife Smt. Ruby Kumari held with Bank of India, GB Road, Gaya were misutilized in connivance with the Bank Officials, in as much as, huge amount of cash was deposited and transferred to

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other accounts without their knowledge and consent. On the basis of the Letter No.244/C dated 22.12.2016 issued by the Superintendent of Police, Economic Offence, Patna ECIR No.PTZO/05/2016 dated 26.12.2016 was recorded by the Enforcement Directorate, Patna Zonal Office for investigation under the provisions of PMLA. After investigation, the case was registered as specified.

4. A supplementary complaint was filed on 17.12.2018 in the form of supplementary complaint against the various firms including this petitioner (Shyam Sunder Bajaj) being the proprietor of M/s Shivam Agency. Allegation is that a sum of Rs.1.81 crores were deposited by cash in bank account of (Smt. Ruby Kumari (b) M/s Bhola Textile (c) M/s Shiva Textile and (d) Mr. Vimal Kumar. After deposit of cash amount in the above accounts in following way money was transferred through bank transfer to the petitioner's firm bank account with the ICICI Bank, Burra Bazar in the name of M/s Shivam Agency.

23.09.2016 - By RTGS Rs.75 lakhs (Rs.60 lakhs + Rs.15 lakhs) from Bhola Textile

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26.09.2016 - By RTGS Rs.10 lakhs from Vimal Kumar

03.10.2016 - By RTGS Rs.36 lakhs from Shiva Textile

10.11.2016 - By RTGS Rs.60 lakhs from Ruby Kumari
(After demonetization)
total Rs.1.81 crores (rupees one crore eighty one lakhs) only

5. Further allegation is that as per statement of this petitioner under Section 50 of the PMLA Act, he did not personally know the above four persons and that he received supply of sugar orer from Shri Chakresh Jain, Son of Pawan Kumar Jain, however, Chakresh Jain denies any knowledge of such transfer, but as per Call Detail Record (CDR) analysis Chakresh Jain was in constant tough with others including this petitioner during the relevant period and that there is deep nexus amongst them for money laundering. It is also alleged that the petitioner raised sales invoice prior to receipt of goods which were claimed to have been sold.

6. Learned counsel for the petitioner submits that the petitioner is innocent, has committed no offence and he

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has been made accused in this case erroneously by filing the present supplementary complaint case on 17.12.2018, i.e., five months after filing the main case being Special Case No. (PMLA) 02/2018 filed on 18.07.2018 without any explanation of delay. It is further submitted that the petitioner is the proprietor of Shivam Agency, Kolkata deals in sugar business and he buys sugar from mill owners, local market of West Bengal, Bihar, U.P. and Jharkhand and sell it to different traders through out India and due to this sugar business the petitioner came into contact with one Mr. Pawan Jain and his Mr. Chakresh Jain of Gaya to which the petitioner sold huge quantity of sugar to them which he had bought from M/s. K.M. Sugar Mills, Faizabad, U.P. from his allotted agent M/s Bajrangilal & Sons. It is submitted that Pawan Jain and Chakresh Jain paid the amount for sugar to the petitioner through different accounts and also instructed him to make bills and invoices in those names as in business transactions a businessman never mind to receive payments from other sources/parties as it is assumed that they have sold the goods to other parties and arranged the payment

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directly to his account. It is submitted that shocked when he received a letter from E.D. regarding the payments received from these accounts on the instruction of Pawan Jain and Chakresh Jain. It is further argued that the petitioner purchased sugar from K.M. Sugar Mills Ltd. through his allotted agent M/s Bajranglal & Sons. who arranged the trucks from different transport of Faizabad and Benaras and petitioner received payments from Chakresh Jain through the account of Smt. Ruby Kumari and on his instruction the petitioner paid the amount to sugar mills to buy the goods. It is submitted that on 09.11.2016 Chakresh Jain talked to the petitioner from his Mobile No.09472442870 and gave an order for 1600 quintals of sugar for Rs.60 lacs and later on 10.11.2016 he told the petitioner that from the account of one Ruby Kumari vide Account No.44752011000725, Bank of India Branch, G.B. Road, Gaya the said amount is being transferred through RTGS to Account No.627905500301 of the petitioner held with ICICI Bank, Burra Bazar Branch, Kolkata. It is further submitted that at the time of demonetization when the account of Ruby Kumari was

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searched by the E.D. and when her statement was taken, she refused to identify the petitioner and infact even the petitioner does not know her as Chakresh Jain was the mediator between them and petitioner received the amount on the instructions of Chakresh Jain. Learned counsel for the petitioner also submits that when the petitioner came to know about the whole facts he contacted Chakresh Jain who told him if E.D. called him for the statement, he will certainly give the true statement but when he was called by the E.D. for the statement, it was shocking that he (Chakresh Jain) flatly refused to recognize Ruby Kumari in order to save himself then the petitioner instituted and registered F.I.R. against them being Civil Lines P.S. Case No.69/2018 on 13.02.2018 for the offence under Sections 419, 420, 120B and 34 of the Indian Penal Code enclosing all the documents, like, licence, Bilty, Challan etc. It is further submitted that the amount of Rs.60 lacs were transferred to the account of the petitioner for sugar price during demonetization from the account of Ruby Kumari by Moti Lal Patwa on the instructions of Chakresh Jain. Learned counsel

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for the petitioner further submits that the Enforcement Directorate did not seek custodial interrogation of this petitioner and this petitioner fully participated before the ED during investigation and got his statement recorded as and when called upon to do so. It is further submitted that the petitioner is a man of clean antecedent and is a permanent resident of West Bengal with no chance of fleeing away from justice as he has always participated and joined the investigation before the ED. Learned counsel for the petitioner further submits that in none of the criminal cases FIRs. Viz. Gaya Civil Lines P.S. Case No.339/16 or 340/2016, this petitioner is made accused. No cash was ever deposited in the Firm's bank account even as per ED rather it is a case of transfer by RTGS funds in the bank account of the firm of the petitioner the name whereof is M/s Shivam Agency. There is no allegation against the petitioner that he made the transfer from the bank accounts of individuals in the bank account of the petitioner's firm. The petitioner is a sugar trader/agent and earns profit through commission by accepting orders from traders, like, Chakresh

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Jain who ordered for supply of sugar which he forwards to sugar mills. The ED has not disputed the business of this petitioner. In business, each and every buyer need not be personally known to the agent. He has already explained before ED that he received orders from Shri Chakresh Jain, Son of Shri Pawan Kumar Jain and received payments towards the orders from him.

7. The previous relationship of this petitioner with said Shri Chakresh Jain is admitted even as per the CDR analysis of ED that he was in touch with others as well as with this petitioner which establishes that this petitioner had prior relationship with said Chakresh Jain and on whose instructions and orders, the goods were supplied, and payment received. The petitioner has annexed documents in the bail petition to show the previous trade and relationship with Chakresh Jain (a resident of Gaya) whereas the petitioner is a trader of West Bengal.

8. Learned counsel for the petitioner submits that the petitioner in support of his submission and for granting him the privilege of anticipatory bail relies upon the

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guidelines laid down by the Hon'ble Supreme Court in Satender Kumar Antil's case [Special Leave to Appeal (Crl.) No.5191 of 2021: Satender Kumar Antil Vs. Central Bureau of Investigation and Another]. He further relies upon the original order dated 07.10.2021, which was modified with respect to Section 45 of the PMLA by an order dated 16.12.2021 of the Hon'ble Supreme Court and reading the same together the Hon'ble Supreme Court broadly held that PMLA Offence is under Category C as per the order dated 07.10.2021.

9. The requisite condition is that the accused is not arrested during investigation and that he has cooperated through in the investigation including appearing before the investigating officer whenever called which the petitioner in the present case is compliant.

10. Dr. K.N. Singh, the learned Additional Solicitor General assisted by Mr. Anshay Bahadur Mathur appearing on behalf of Enforcement Directorate has opposed the prayer for anticipatory bail of the petitioner-accused by referring the complaint petition and thereby argued that during

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investigation under PMLA, it is established that the petitioner-accused Shyam Sunder Bajaj, proprietor of M/s Shivam Agency, is knowingly involved in acquisition, concealment and transfer of proceeds of crime and projection of the same as untainted. Therefore, the petitioner-accused has committed the offence of money laundering, as defined under Section 3 of the PMLA and punishable under Section 4 of the PMLA, 2002 because during investigation proceeds of crime amounting to Rs.1,81,00,000/- (Rs. One Crore Eighty One Lakhs) were transferred to the Bank A/c No.627905500301 in the name of M/s Shivam Agency, Kolkata belongs to the petitioner-accused held with ICICI Bank, Burra Bazar, Kolkata during the period from September, 2016 to November, 2016 prior to and during demonetization from the different accounts including Rs.60 lacs from the bank account of Smt. Ruby Kumari. It is further argued that the criminal Complaint Case No.69/2018 was lodged by the petitioner-accused after one year and three months, i.e., on 13.02.2017, as an after thought, in an attempt to distance himself from the tainted

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money and to project the same as untainted. It is further argued that Section 3 of the P.M.L. Act, 2002 states that "Whatsoever 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" whereas Section 24 of the 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". The learned Additional Solicitor General further submits that the petitioner personally, did not know Smt. Rubi Kumari, Shri Vimal Kumar and the proprietor of M/s Shiva Textiles & M/s Bhola Textiles and has not sold sugar to them. The petitioner received order for supply of sugar from Shri Chakresh Jain (Son of Shri Pawan Kumar Jain) and received the above-mentioned payments towards the orders received from him.

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He (the petitioner) admitted his mistake of accepting payments in his bank account from the parties with whom he had not entered into any business transaction. It is submitted that Shri Chakresh Jain, proprietor of M/s Sidh Traders, Gaya in course of his statement recorded under Section 50(3) of the PMLA stated that he had not made payment of Rs.181 lakhs to the bank account number 627905500301 held with ICICI Bank, Burra Bazar, Kolkata in the name of M/s Shivam Agency from the bank accounts of Smt. Rubi Kumari, Shri Vimal Kumar, M/s Bhola Textile and M/s Shiva Textiles and not taken delivery of sugar in lieu of this amount. It is further submitted that the petitioner has raised sales invoice no.1058 to 1062, in the name of Rubi Kumari on 11.11.2016, from the stock of sugar purchased vide invoice no.2603 to 2606 all dated 16.11.2016 and 2670 dated 21.11.2016 issued by K.M. Sugar Mills Limited, Motinagar, Faizabad (prior to receipt of goods, which were claimed to have been sold).

11. Hence, it is logical to conclude that M/s Shivam Agency, Kolkata (petitioner's firm) is not involved in any

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genuine business transaction in respect of Rs.1.81 Crores received in its bank account mentioned above. Regarding receipt of the said amount, the petitioner (Shri Shyam Sunder Bajaj) had no credible/verifiable explanation. Therefore, proceeds of crime amounting to Rs.1,08,89,928/- available with Shyam Sunder Bajaj has been attached vide PAO No.02/2018 dated 01.02.2018 and O.C. No.894/2018 has been filed for adjudication which has been confirmed by the learned Adjudicating Authority vide order dated 20.07.2018.

12. Moreover, Shri Rajesh Kumar (husband of Smt. Rubi Kumari) vide his statement dated 29.12.2016 recorded under Section 50 of PMLA, stated that his wife had neither deposited Rs.60,00,000/- in her account on 10.11.2016 nor transferred the same to the bank account no.627905500301of M/s Shivam Agency, Kolkata. These transactions were effected without her knowledge and consent by way of forging documents. Hence, he had lodged an FIR bearing no.339/2016 dated 13.12.2016 with the police authorities at Gaya for commission of schedule

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offences under Sections 419, 420, 467, 471 and 120B of the Indian Penal Code. The above statement of Shri Rajesh Kumar has also been reiterated by Smt. Rubi Kumari.

13. Mr. Singh, the learned Additional Solicitor General referred to the amended Section 45 of the PMLA, which says that the offences are cognizable and non-bailable. Section 45 of the Act (as amended vide Finance Act, 2018) reads as under:

> 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 a 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 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:

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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 a State Government authorised 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 authorised, 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 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."

14. Dr. Singh relies on the judgment passed in the case of Ajay Kumar Vs. Directorate of Enforcement in Crl. Appl. (BA). 1149 of 2021 the Bombay High Court (D.B.) on reference vide order dated 06/28.01.2022 while relying on V.C. Mohan case [Special Leave to Appeal (Crl.) No(s).8441/2021] decided on 04.01.2022 observed that

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with the amendment in the Act post Nikesh Tarachand Shah the entire situation is changed, taking note of Nikesh Sah case observed that twin conditions of Section 45 of the Act stand revived.

15. Learned counsel for the E.D. further submits that Hon'ble Supreme Court in the matter of P. Chidambaram Vs. Directorate of Enforcement, (2019) 9 SCC 24 held that economic offence stand as a different class as they affect economic fabric of society and therefore under Section 438 Cr.P.C. being an extraordinary remedy should be exercised sparingly. Learned counsel for the E.D. further submits that in case of Satendra Kumar Antil Vs. C.B.I & Anr. passed in Special Leave to Appeal (Cri) No(s) 5191/2021 dated 07.10.2021 passed by the Hon'ble Supreme Court, it was laid down that the category C offences which included PML Act the compliance of Section 45 of the said Act or to be adhered to which from a different nature of offence.

16. In view of the aforesaid proposition of law, the applications and implications of Section 45 of the Act needs

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to be considered while granting anticipatory bail and the privilege of anticipatory bail may be given only if the High Court is of the view that accused has not committed any offence under the PML Act. Whereas, in the instant case there are sufficient materials to prove the complicity of the petitioner. Charge against accused persons has not been proved by Special (PMLA) Court, Patna due to non-appearance of the accused persons of this case including the petitioner.

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.

18. From consideration of the above facts and circumstances of the case basically from the allegations as made in paragraphs 1 to 64 in supplementary complaint

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petition, it reveals that the bank accounts in the name of the complainant and others were misused in connivance with the bank officials of G.B. Road, Gaya inasmuch as huge amount of cash was deposited and transferred to different other accounts without knowledge and consent of the account holders and thereby making such deposits/transfers illegal and unlawful in violation of the rule, regulation and law as well as Section 4 of Money Laundering Act. Money is being siphoned off immediately from the account to conceal its origin and to project it as untainted against this petitioner-accused along with others.

19. Taking into consideration the facts aforesaid, I am not inclined to enlarge the petitioner on anticipatory bail. The prayer for anticipatory bail of the petitioner is rejected.

(Anjani Kumar Sharan, J.)

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