IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL NO.2885 OF 2021

Ajaya Kumar Ray	....	***Petitioner***
		Mr. Y. Das, Sr. Advocate

-versus-

Union of India & Another	....	***Opposite Parties***
		Mr. B. Nayak, CGC.

CORAM:
MR. JUSTICE D.DASH

ORDER
25.11.2022

Order No.

15. 1. This matter is taken up through hybrid arrangement (virtual/physical) mode.

2. The Petitioner apprehending his arrest and likely detention in connection with Criminal Misc. (PMLA Case No.116 of 2018) on the file of learned Special Judge (PMLA Act), Bhubaneswar has filed this application under Section-438 of the Cr.P.C. seeking his release on bail in the above event.

3. Heard Mr. Y. Das, learned Senior Counsel being assisted by Mr. R. Roy, learned Counsel for the Petitioner and Mr. B. Nayak, Central Government Counsel for the Enforcement Directorate (ED).

4. Keeping in view the submissions made, I have gone through the averments taken in the application filed by the Petitioner as also the documents annexed thereto.

5. The objection affidavit with the annexed documents have also been perused.

6. Upon registration of Cuttack Vigilance P.S. Case No.38 of 2009, pursuant to the written report of one Mr. Birat Chandra Sethi, the Deputy Superintendent of Police, Jajpur Unit alleging commission of

offence under Section-13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988 (in short "the P.C. Act") and Section 109 of the Indian Penal Code; the investigation commenced. Finally, on 30.01.2016, charge-sheet was submitted placing the Petitioner and his wife arraigned as co-accused to trial for accumulation of huge wealth and assets disproportionate to their known sources of income standing at 175.55 per cent in excess for commission of offence under section-13(2) read with 13(1)(e) of the P.C. Act and section-109 of the Indian Penal Code.

7. Taking the above as the base, the Enforcement Directorate registered an information report vide (ECIR) No.ECIR/ BBSZO/04/2017 dated 17.11.2017 in the Sub-Zonal Office of Enforcement Directorate, Bhubaneswar. The investigation then commenced for ascertaining as to if there has been commission of offence under the provisions of the Prevention of Money Laundering Act, 2002 (in short 'the PMLA Act').

The Petitioner having entered into the Government service as Inspector of Commercial Tax in the year, 1979 has worked at different stations and ultimately was promoted as Additional Commercial Tax Officer (OFC-II) in the year, 1993. He was posted for quite some time till his retirement at Manguli Check Gate, Tangi, Cuttack. It is stated that the Petitioner was having direct and indirect involvement in accumulating the assets in his name as well as in the name of his wife and others in diverting his ill-gotten money which had come to his hands as the proceeds of the crime. Thus it is stated that he in course of his service in providing the illegal benefits and unlawful gain to the persons through whom he had illegally raised the funds and thereafter by transacting and utilizing the said funds has acquired the properties.

The Complaint narrates that the properties described in para-6 have been acquired during the check period and projected as untainted have been acquired out of the proceeds of the crime under the section-13 of the P.C. Act which comes within the scheduled offence under the PMLA Act and thus there has been commission of offence under section-3 of the PMLA Act. This complaint is however said to be preliminary and leave has been sought for to file supplementary complaint. In view of above, it has been said that a case stands against the Petitioner that he is knowingly involved in acquisition of the properties in dealing with the proceeds of the crime and then projecting the same to be untainted is claiming as such.

8. Taking into account the submissions made and for the aforesaid as those emanate from the materials placed; further keeping in view the provisions as to presumption as contained in section-24 and the statutory bar placed under section-45 of the PMLA Act as well as pronouncement of the Hon'ble Apex Court in case of *Vijay Madanlal Choudhary & Others Vrs. Union of India & Others*; in SLP (Civil) No.28394 of 2021 and batch; while being not inclined to accept the prayer for grant of anticipatory bail; this Application stands disposed of with the observation that when the Petitioner upon his appearance before the Court in seisin of the case would move for grant for regular bail, the same shall be considered on its own merit; further taking into account all such developments in the case by then in their proper perspectives and disposed of early in accordance with law without being influenced or prejudiced in any manner by this order.

9. The ABLAPL is accordingly disposed of.
Issue urgent certified copy as per rules.

(D. Dash),
Judge.

Narayan