IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18172 of 2023

Arising Out of PS. Case No.-5 Year-2018 Thana- GOVERNMENT OFFICIAL COMP. District- Patna

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Ram Saran Ravi @ Ujjwal Kumar @ Ram Saran Yadav @ Ramsharan Ravi Son of Dashrath Yadav Resident of village - Satgharwa, P.S.- Dharhara, District - Munger presently residing at Mohalla Azad Nagar, Purabsarai, Near Brahmasthan, P.S.- Kotwali, District - Munger

... ... Petitioner/s

Versus

1. The Union of India, Through the Director, Directorate of Enforcement, Government of India New Delhi New Delhi
2. The Director, Directorate of Enforcement, Government of India, New Delhi. Bihar
3. The Assistant Director, Directorate of Enforcement, Government of India, Patna Zonal Office, Ist floor Chandpura Place, Bank Road West Gandhi Maidan, Patna.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Sarbottam Kumar Sarkar,Advocate
For the Opposite Party/s : Mr.K.N. Singh(A.S.G.)
Mr.Ram Anurag Singh, CGC

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL ORDER

5. 01-08-2023 Heard learned counsel for the petitioner and learned counsel for opposite parties.

2. The petitioner has preferred this application for grant of anticipatory bail in connection with PMLA-SC-cum-Special Trial (PMLA) No. 02 of 2021 dated 31.03.2021 arising out of ECIR No. PTZO/05/2018 dated 29.06.2018 for offence punishable under Section 4 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as

‘P.M.L.Act’).

3. According to the prosecution, vide Letter no. 145/C dated 20.06.2018, the S.P. Economic Offence Unit, Bihar, Patna has forwarded list of 61 FIRs registered against Arvind Yadav, out of which, in seven cases chargesheets have been filed against him and other co-accused persons, who are his close family members. It is alleged that petitioner (Ramsaran Ravi @ Ramsaran Yadav @ Ujjwal Kumar) is close associate of main accused Arvind Yadav, who is an active member of banned outfit CPI (Maoist), a Left Wing Extremist Organization against whom in various police stations of Munger/Lakhisarai/Jamui of Bihar, total 61 FIRs have been registered under various sections of Indian Penal Code, Arms Act, Unlawful Activities (Prevention) Act, Explosive Substance Act etc. and there is allegation that he is involved in threatening and killing of innocent people/security forces. It is further revealed that he alongwith his associates including this petitioner are alleged to have been engaged in collection of levies for the banned outfit by threatening innocent people and invested the proceeds of crime in various movable/immovable properties in the name of his family members. The allegation attributed to the

petitioner is that he, as associate of Arvind Yadav, *and also a co-accused in Dharhara P.S. Case No. 115 of 2010 dated 27.09.2010*, has also acquired huge assets in the name of his family members and relative from the collection of illegal levy alongwith Arvind Yadav. The details of immovable properties of petitioner are as follows:

Sl.	**Sale Deed No.**	**Value of the property**	**Properties acquired in the name of**
1.	6164 dated 03.05.2011	Rs. 1,00,000/- (on which, two-storey building was constructed)	Kusumi Devi (mother of petitioner)
2.	1707 dated 16.06.2017	Rs. 7,09,000/- (out of which, Rs. 1,45,000/- from bank loan, Rs. 2,60,000/- from close relative and Rs. 3,04,000/- were paid in cash out of sale proceeds of crops/land)	Muadhumita Kumari (wife of petitioner)
3.	17066 dated 16.06.2017	Rs. 10,60,000/- (out of which Rs. 90,000/- from bank and Rs. 8,80,000/- were paid out of sales proceeds of crops/lands)	Muadhumita Kumari (wife of petitioner), Manju Kumari Rani (wife of late Ram Chandra Yadav) and Gayatri Devi (wife of Ram Baran Yadav)

4. Petitioner states that his source of income is from agriculture, Tractor, Thresher and commission of selling of food-grains, but no documentary evidence was produced in this regard by him. The proceeds of crime in cash was invested for acquisition/construction of these properties, which comes to near about Rs. 63,13,380/-, for which, no

source of income was provided by the petitioner, which shows his conscious involvement in laundering of tainted money, acquired out of proceeds of crime.

5. It is argued by learned counsel for the petitioner that petitioner has not committed any offence, as alleged by the complainant and no offence under Section 4 of P.M.L.Act is made out against the petitioner. Petitioner has got no concern with the co-accused Arvind Yadav. As a matter of fact, petitioner and his family members had possessed approximately 130 Bigha of ancestral land, out of which, 27 Bigha of land was sold by this petitioner and his family members for purchasing the lands in question and thereafter, construction of house has also been made after selling of the lands, including agricultural income, selling of food-grains, milk, fisheries and woods. Therefore, the petitioner was not involved in laundering of tainted money acquired out of proceeds of crime. It is further submitted that possession of unaccounted property acquired by legal means may be actionable for tax violation and yet, will not be regarded as proceeds of crime unless the concerned tax legislation prescribes such violation as an offence and such offence is included in the Schedule of the 2002 Act. It is further

submitted that the petitioner and his family members themselves are the victim of naxalites which is evident from the fact that in the year 2007, the naxalites killed the brother of the petitioner namely Ramchandra Yadav, a constable of BSF, for which, Dharahara P.S. Case No. 47 of 2007 was registered, in which, the State Government has also granted Rs. One lac compensation to Manju Kumari Rani (wife of the deceased) and thereafter, in the year 2009, the naxalites looted the house of the petitioner, for which, Dharahra P.S. Case No. 12 of 2009 was registered.

6. It is further submitted by learned counsel for the petitioner that though, petitioner has got two criminal antecedents i.e. (i) Dharhara P.S. Case No. 115 of 2010 (for offence u/s 147, 148, 149, 342, 307, 504 of IPC , Section 27 Arms Act, Section 17 CLA Act and Section 11, 13 of UPA Act) and (ii) Ladia Tar P.S. Case No. 38 of 2019 (for offence u/s 302, 201, 120(B) IPC and Section 2(2)(v) of SC/ST Act) and in both the cases, petitioner has already been acquitted by the learned Court below and therefore, he submits that since petitioner has already been acquitted in relation to the scheduled offence and presently he is not accused of any scheduled offence, he be enlarged on anticipatory bail. In

support of above submission, learned counsel for the petitioner has relied upon a judgment of Hon'ble Supreme Court dated 16.08.2022 passed in Criminal Appeal No. 1254 of 2022 {Arising out of SLP (Crl.) No. 4258 of 2021} in the case **Parvathi Kollur & Anr. vs. State by Directorate of Enforcement**. On aforesaid ground, it has been prayed to extend the privilege of anticipatory bail to the petitioner.

7. Learned counsel appearing on behalf of opposite parties vehemently opposes the prayer for anticipatory bail of petitioner and submits that during course of investigation, it was revealed that co-accused Arvind Yadav and his close associate Ramsaran Ravi (petitioner) have acquired movable/ immovable assets to the tune of Rs. 1,14,86,611/- by the extortion money in the names of their family members, who have no source of income and it was projected as untainted as no details have been provided by the petitioner regarding income tax return filed by him during the alleged F.Year as also no documentary evidence has been produced with regard to source of acquisition and construction of the above properties, but the petitioner, in order to legalise the ill-gotten money, has filed ITRs in the name of his wife and other family members. Smt. Madhumita

Kumari, who is wife of petitioner, has filed her I.T.Return for F.Y. 2016-17, 2017-18 & 2018-19, and during her statement, she stated that she is a housewife, having no knowledge of filing of ITRs and it can be explained by her husband only. Similarly, statements of Smt. Gayatri Devi and Manju Kumari Rani were obtained and all have stated that the details of income may be given only by this petitioner.

8. Having heard learned counsel for the parties and taking into consideration the facts and circumstances of the case and also the fact that petitioner is knowingly involved in acquisition, concealment and transfer of proceeds of crime and projection of the same as untainted, pursuant thereto various transactions relating to purchase of immovable properties etc. were recovered and have been mentioned in detail, as referred to hereinabove. Further, Section 45(1)(ii) of the P.M.L.Act provides that notwithstanding anything contained in the Cr.P.C., no person accused of an offence under the P.M.L.Act shall be released on bail unless the Court is satisfied that there are reasonable grounds for believing that he/she is not guilty of such offence and that he/she is not likely to commit any offence while on bail. The Bombay High Court in its order dated 28.1.2022 passed in **Cr. Application (BA) No. 1149 of 2019**

(Ajay Kumar vs. Directorate of Enforcement, Nagpur) held as follows:

> "49. We may reiterate that the reference arose out of statutory jurisdiction and not constitutional jurisdiction of this Court. Unless there is proper challenge and pleadings, the issue of constitutional validity cannot be undertaken. Undoubtedly, the Legislature has power and competence to amend the provisions of the Act. Unless the amended provision is struck down by the Courts, it cannot be watered down. Since after the amendment the entire complexion of section 45 has been changed, we are not in agreement with the contention that the entire section has to be reenacted by way of amendment after decision in the case of *Nikesh Shah (Supra)*. Therefore, in our opinion, the twin conditions would revive and operate by virtue of Amendment Act, which is on date in force. In view of that, we answer the reference by stating that the twin conditions in section 45(1) of the 2002 Act, which was declared unconstitutional by the judgment of the Apex Court in *Nikesh T.Shah vs. Union of India (2018) 11 SCC 1*, stand revived in view of the Legislative intervention vide Amendment Act 13 of 2018."

9. 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. As aforesaid, the High Court has not touched upon this aspect at all. It is urged before us by the respondent that this objection was never taken before the High Court as it is not reflected from the impugned judgment. It is not a question of taking objection but the duty of court to examine the jurisdictional facts including the mandate of Section 45 of the PMLA Act, which must be kept in mind. Accordingly, we deem it appropriate to set aside the impugned judgment and order and relegate the parties before the High Court for reconsideration of Criminal Petition No. 4134 of 2021 afresh for grant of anticipatory bail filed under Section 438 of the Code of Criminal Procedure in connection with stated PMLA offence."

10. Taking into consideration the rival submissions of learned counsel for the parties and materials available on record as also in view of section 45 of the P.M.L. Act, this Court is of the opinion that the petitioner has not made out a case for grant of anticipatory bail and as such, his application

for grant of anticipatory bail stands rejected.

(Prabhat Kumar Singh, J)

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