IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25619 of 2023

Arising Out of PS. Case No.-1 Year-2015 Thana- GOVERNMENT OFFICIAL COMP. District- Patna

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RAJESH KUMAR Son of Late Ganga Prasad R/o Bidurati Hata, P.S.- Siwan Muffassil, District - Siwan

... ... Petitioner/s

Versus

The Directorate of Enforcement, Govt. of India through its Assistant Director 1st Floor, Chandpura Place, Bank Road, West Gandhi Maidan, Patna - 800001

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Rajeev Kumar Singh (Adv.)
For the Opposite Party/s	:	Mr.K.N. Singh (ASG)
		Mr.Manoj Kumar Singh (ED)

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL ORDER

6 18-09-2023 Heard learned counsel for the petitioner and learned counsel appearing on behalf of opposite party / Directorate of Enforcement.

2. The petitioner has preferred this application for grant of anticipatory bail in connection with Special Trial No. (PMLA) No. 04 of 2022, arising out of ECIR No. PTZO / 01 / 15 dated 30.03.2015, for offence alleged under section 45 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'P.M.L.Act'), in which, cognizance has been taken against him and other co-accused for the offence punishable under Section 4 of the P.M.L.Act.

3. The prosecution case, in brief, is that the

complainant, who is Assistant Director (Enforcement Directorate), Patna, filed a complaint under Section 45 read with Section 44 of P.M.L.Act against accused persons under Sections 419, 420, 467, 468, 471, & 120B of the Indian Penal Code read with Sections 66, 72 & 75 of the Information & Technology Act, on the basis of Gandhi Maidan P.S. Case No. 244 of 2014 and subsequently, chargesheet was filed against the accused persons including this petitioner wherein it was stated that a raid was conducted by the Gandhi Maidan Police and on search, many ATM Cards of various banks, money and mobiles were seized from co-accused Ranjeet Kumar and during search operation on identification of said Ranjeet Kumar, other persons namely Rajesh Kumar Goyal and Paramhans Pathak were arrested from Room No. 406, N.P. Centre, New Dak Banglow Road, Patna. Further, an amount of Rs. Three lacs was also recovered from one Satish Chandar Jha, who was present at the time of search. On analysis of said F.I.R., it was revealed that total 36 ATM Cards of various banks was in possession of Ranjeet Kumar Mandal whereas the details of accounts and the names of various account-holders related to all the ATM Cards seized from co-accused Ranjeet Kumar Mandal were obtained from the concerned banks and that ATM

Cards were issued in various accounts of different banks were of various persons residing in the different parts of the country. It is further alleged that out of total 36 ATM Cards recovered from co-accused Ranjeet Kumar Mandal, the details of 9 ATM Cards were not legible and rest 27 ATM Cards were analyzed and total credit in the said account was found to be Rs. 38,94,450/-.

4. The specific allegation against this petitioner is that he, knowingly involved in acquisition, concealment, transfer of proceeds of crime and further involved in process or activity connected with proceeds of crime and projection of the same as untainted and thus, has committed the offence of money laundering, as defined under Section 3 of the P.M.L.Act r/w Section 70 of P.M.L.Act and punishable under Section 4 of the P.M.L.Act.

5. It is submitted by learned counsel for the petitioner that petitioner is not named in the F.I.R. and his name has surfaced during course of investigation on the basis of confessional statement of co-accused Sunil Kumar before the police, which has got no evidentiary value. Petitioner is an established businessman of Siwan, having higher reputation in the society. Petitioner is an Income Tax Assessee, who has also

PAN number and he has paid Rs. 6,79,90.21 for the annual year 2011-12. Similarly, the petitioner has also paid sales tax for the financial year 2012-13 and 2013-14 of Rs. 3,70,507/- and Rs. 4,88,986/- respectively. It is further argued that the ED has also not found any property, which is possessed/acquired by this petitioner in his own name or in the name of his family members possessed from the proceeds of crime. It is further submitted that petitioner was summoned by the prosecution on two occasions i.e. on 03.07.2018 and 04.07.2018 where he was interrogated by the authority concerned in details and the petitioner has also provided all the relevant documents to the Investigating Agency in connection with his business with City Rolling Mills Pvt. Ltd.

6. It is argued by the counsel for the petitioner that the case of the petitioner is squarely covered by the case of ***Aman Preet Singh and Siddhart*** in which Hon'ble Supreme Court has granted bail to the accused persons.

7. It is lastly argued by learned counsel for the petitioner that Hon'ble Apex Court has held that in case, an accused has not been arrested during investigation then after submission of chargesheet, there is no requirement of custodial interrogation, rather his presence is required by the court of the

trial. In support of above submission, he has relied upon a recent judgment of Hon'ble Supreme Court dated 20.03.2023 in the case of **Mahdoom Bava vs. Central Bureau of Investigation** {Arising out of SLP (Crl.) No. 376 of 2023}. On aforesaid ground, it has been prayed to extend the privilege of anticipatory bail to the petitioner.

8. Learned counsel appearing on behalf of opposite party / E.D. vehemently opposes the prayer for anticipatory bail of petitioner and submits that during course of investigation, it was revealed that the amount which was deposited by co-accused Ranjeet Kumar Mandal to the tune of Rs. 1,08,53,400/- during the period from 23.04.2014 to 17.06.2014 in the name of this petitioner. Therefore, it is evident that the petitioner has acquired proceeds of crime by disguising the same in the form of supply of iron bars and hence he has committed the offence of money laundering. It is further submitted that further investigation is going on, not to establish the role of the petitioner in offence of money laundering, but to trace the proceeds of crime, which has been siphoned off by this petitioner. During course of investigation, the petitioner was interrogated and his statement was recorded under Section 50 of the P.M.L.Act, and this petitioner has not

given satisfactory reply to most of the questions. It is lastly submitted by learned counsel for the opposite party that prayer for anticipatory bail of co-accused namely Ranjeet Kumar Mandal and Saudagar Mandal has already been rejected by a coordinate Bench of this Court, vide order dated 14.07.2023 passed in Cr.Misc. No. 28843 of 2023. On aforesaid ground, he has requested to refuse the prayer for anticipatory bail of petitioner.

9. 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, 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."

10. 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."

11. 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 and the fact that prayer for anticipatory bail of other two co-accused has been rejected by a coordinate Bench of this Court, vide order dated 14.07.2023 passed in Cr.Misc. No. 28843 of 2023, this Court does not find any ground to grant anticipatory bail to the

petitioner and as such, the application for grant of anticipatory bail to the petitioner is rejected.

(Prabhat Kumar Singh, J)

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