IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25777 of 2022

Arising Out of PS. Case No.-8 Year-2018 Thana- GOVERNMENT OFFICIAL COMP. District- Patna

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RAHUL ANAND Son of Brajesh Thakur Resident of Pratah Kamal, Sahu Road, P.O.- H.P.O., P.S.- Town Police Station, District - Muzaffarpur, Bihar - 842001

... ... 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, Chandpur Place, Bank Road, West Gandhi Maidan, Patna, Bihar

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Alok Kumar, Adv., Mr. Shadab Akhter, Adv.
For the Opposite Party/s	:	Mr. K.N.Singh (A.D.S.G)
For the E.D.	:	Mr. Tuhin Shankar, C.G.C.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL ORDER

9 19-05-2023 Heard Mr. Alok Kumar and Mr. Shadab Akhter, learned counsels appearing on behalf of the petitioner, Mr. K.N. Singh, learned Senior Counsel for the opposite party no. 2 and Mr. Tuhin Shankar, learned counsel appearing on behalf of the E.D.

2. The petitioner apprehends his arrest in connection with Special Case (PMLA), arising out of ECIR No. PTZO/08/2018, dated 22.11.2018 recorded on the basis of 3 F.I.R's bearing (1). Mahila P.S. Case No. 33 of 2018, dated 31.05.2018 (2). Mahila P.S. Case No. 40 of 2018, dated 30.07.2018 (3). CBI, SPE, SCB Patna Case No.

RC09220188S0001-RCI (s)/2018/CBI/SCB/Patna, dated 28.07.2018, registered under Sections 45 of the Prevention of Money Laundering Act, 2002.

3. Prosecution story in brief is that the huge amount has been transferred from the bank account of one N.G.O. namely **Sewa Sankalp Ewam Vikas Samiti** (hereinafter referred to as the 'Samiti') directly to the bank account of co-accused namely Brajesh Thakur and his family members including the present petitioner for their personal use by siphoning of the fund provided by the Government for the welfare of the children. The specific allegation against the petitioner is that the fund has been transferred from the bank account of the said N.G.O. The F.I.R. No. 33 of 2018, dated 31.05.2018 and F.I.R. No. 40 of 2018, dated 30.07.2018 were lodged against the accused persons. Petitioner has been made accused in both the F.I.R. in which charge-sheet were submitted on different dates. Main accused is the father of the petitioner namely Brajesh Thakur. The name of the petitioner surfaced in course of investigation. The allegation is that the petitioner was also found to have actively participated in the commission of offence. The charge-sheet reveals that the offence comes under scheduled offence. The matter was taken up by the Enforcement

Directorate (E.D.) and Enforcement Directorate after investigation has lodged E.C.I.R. Case and thereafter has submitted the complaint before the Special Court.

4. Mr. Alok Kumar, learned counsel appearing on behalf of the petitioner assisted by Mr. Shadab Akhter submitted that the petitioner owns a separate business. Petitioner has been implicated in the present case on false acquisition. The petitioner is assessed to income tax and the profit and loss accounts are duly certified by the Chartered Accountant, which confirms that the petitioner has known source of income. It has been further been clarified that the amount which has been transferred in his account by his father, who is co-accused is required to be clubbed in the account of his father. The petitioner must not be subjected to face the criminal charges for the alleged illegal act of his father. The petitioner is ready to cooperate in trial. Learned counsel further submits that Petitioner must not be allowed to face the rigor of Section **45 of the Prevention of Money Laundering Act, 2002** (hereinafter referred to as the 'Act').

5. Learned counsel further claims parity with one co-accused namely Manorma Devi, whose anticipatory bail was rejected and Apex Court has stayed the operation of arrest

during the pendency of the said S.L.P. pending before the Apex Court.

6. Per contra, learned counsel appearing on behalf of the Enforcement Directorates submitted that the petitioner has knowingly entered into the illegal transfer of money which belongs to the Government for personal use. He further submits that account reveals that transfer has been made from the proceed of the Samiti for the use of family member. *Prima facie* case of money laundering for the offences punishable under Section 3 of the Prevention of Money Laundering Act, 2002 is made out against the petitioner.

7. Learned counsel further submits that the income tax return submitted by the petitioner shows that the property which is owned is much more than the actual income of the petitioner. Learned counsel further submits that rigors of Section 45 of the Prevention of Money Laundering Act, 2002 shall be applicable even with respect to the application under Section 438 Cr.P.C. and therefore the petitioner is not liable to be granted pre arrest bail.

8. Having considered the rival submissions made by the respective parties, accusation against the petitioner reveals that the Government money was transferred in the account of

the petitioner by the N.G.O. namely Sewa Sankalp Ewam Vikas Samiti has been siphoned by the accused named in the F.I.R. including the present petitioner. It is admitted that the petitioner is a business man and the income tax return filed by him also reflects that the property stands in the name of the petitioner through the value assessed is much more than the petitioner owns source of income as per income tax return for different financial year.

9. This Court finds that Section 45 of the Prevention of Money Laundering Act, 2002 also stands in the way of the petitioner which is reproduced hereinafter:-

> "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 an opportunity to oppose the application for such release; and
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> (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 or 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
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> (ii) any officer of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government.
>
> [(1-A) 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.]
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> (2) The limitation on granting of bail specified in of 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 being in force on granting of bail."

10. So far as the petitioner's claim that his case is identical to co-accused Manorma Devi, who is a lady aged about 75 years and is mother of the petitioner. It is made clear that Clause 2 of Sub-section 1 is an exception to the main **Section 45** of the Act which provides that a person who is under the age of 16 years or is a woman or is sick, the Special Court may release on bail.

11. Considering the exception contained in proviso of

Sub-section 1 of **Section 45** of Act, the petitioner cannot claim parity**.**

12. Taking into account rigors of Section 45 of the Act and the discussions made hereinabove, I am not inclined to grant anticipatory bail to the petitioner.

13. Accordingly, the anticipatory bail application is rejected.

14. It is however, made clear that the petitioner may take all the plea as taken here before the Court below.

(Purnendu Singh, J)

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