IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.29634 of 2023
Arising Out of PS. Case No.-2 Year-2016 Thana- GOVERNMENT OFFICIAL COMP. District- Patna

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Neelam Devi Wife Of Dinesh Prasad Gupta R/O Pawapuri, Pokharpur, P.O.- Pawapuri, P.S.- Giriyak, District- Nalanda, 803115 ... Petitioner

Versus

1. The Union Of India
2. The Assistant Director, Directorate Of Enforcement Govt. Of India Ist Floor, Chandpura Palace, Bank Road, West Gandhi Maidan, Patna- 800001
3. District Manager, Bihar State Food And Civil Supplies Corporation, District- Nalanda Bihar

... ... Opposite Parties

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Appearance :

For the Petitioner	:	Mr.Prasoon Kumar, Advocate
For the UOI	:	Mrs. Renuka Sharma, Advocate
		Mr. Rajnikant Singh, Advocate
		Mr Manish Kumar, Advocate
for the BSFC		Mr. S.K.Singh, Usha Kumar, Advocates

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL ORDER

5 25-09-2023 Heard learned counsel for the petitioner and the State.

2. The petitioner has preferred this application for grant of anticipatory bail in connection with Complaint Case No. 7/2018, ECIR No.PTZO/02/2016 dated 26.8.2016 for offence punishable under section 3 of the Prevention of Money Laundering Act, 2002.

3. As per the prosecution case, by way of sale deeds, seven properties were purchased in the name of the petitioner of worth Rs.36,71,465/-. During course of investigation, on scrutiny of investment and details of bank account statement, it was detected that petitioner’s husband Dinesh Prasad Gupta had withdrawn total Rs. 35,10,000/- since 21.2.2012 to 11.3.2015 from the Punjab National Bank and the said money was

investigated by the petitioner/vendor in purchase of the properties in question.

4. It is submitted by learned counsel for the petitioner that petitioner is not named in the F.I.R. and she has been dragged in the case merely on the basis of suspicion and presumption. As a matter of fact, her husband had withdrawn cash from the rice mill bank account and made investment of the said money in immovable property. Pursuant to the said transaction, on the notice of opposite party no.2, petitioner appeared and her statement was recorded, however, she was not taken into custody. In her statement, petitioner has stated that she is a housewife and the properties had been purchased by her husband (a copy of her statement is contained in annexure 3). Her husband also appeared before the investigating agency and in his statement dated 2.2.2018 he clearly accepted that he looks after the business of the firm and investment standing in the name of his wife (the petitioner) is actually the investment made by him (a copy of his statement is contained in annexure 4). It is also submitted that the petitioner never concealed the properties in question and disclosed its source during course of interrogation, as such, no offence under section 3 of the Prevention of Money Laundering Act, 2002 is made out against

her. It is submitted that the petitioner is a lady suffering from illness caused due to spinal cord injury and her husband is already under custody in the same case since 24.2.2023.

5. It is argued by the counsel for the petitioner that in case, an accused has not been arrested during investigation then after submission of chargesheet, there is no requirement of custodial interrogation, rather her presence is required by the court in trial. Case of the petitioner is squarely covered by the decisions of the Hon'ble Supreme court in case of **Siddharth vs The State Of Uttar Pradesh & ors,** passed in **Criminal Appeal No.838 OF 2021 (Arising out of SLP (Crl.) No.5442/2021)** and **Aman Preet Singh Vs. CBI,** passed in **Criminal Appeal No. 929 OF 2021 (Arising out of SLP(Crl.) No. 5234/2021**, in which Hon'ble Supreme Court has granted privilege of pre-arrest bail to the accused persons.

6. Learned counsel for the opposite party no.2/ the Assistant Director, Directorate Of Enforcement Govt. Of India opposes the prayer for bail. He submits that during the course of investigation, it has been established that the petitioner is knowingly involved in acquisition, concealment, transfer of proceeds of crime and projection of the same as untainted. Therefore, petitioner has committed offence of money

laundering as defined under section 3 of the PMLA, 2002. He submits that total 7 immovable properties amounting to Rs.52.18 lacs has been acquired in the name of the petitioner by her husband which is the proceeds of crime generated by misappropriation of paddy and these properties were intentionally purchased in her name to escape the clutches of Tax authority and Law enforcement agency which is corroborated by her statement in which she has stated that these properties were acquired by her husband in her name. It is also submitted that against the alleged proceeds of crime to the tune of Rs.10,15,94,961/- properties valued at Rs.4,21,85,018/- have been identified and have been provisionally attached vide PAO No.09/2018 dated 31.3.2018. lastly, it is submitted that the petitioner by her deliberate conduct has been instrumental in frustrating the trial proceedings by not complying with the summons and bailable warrants issued by the Court below, thereby delaying the entire trial proceedings pending before the Special (PMLA) Court, Patna.

7. While opposing the prayer for bail to the petitioner, learned counsel appearing for opposite party no.2/ District Manager, Bihar State Food And Civil Supplies Corporation, District- Nalanda Bihar, submits that as per Confiscation Case

No.7 of 2018, the petitioner in conspiracy with her husband and other accused persons defalcated public food grain amounting to Rs.10,15,94,961.90and generated several properties in her name. During investigation, offcial witnesses have supported the prosecution case. Inspite of several letters and reminders issued by the then DM, SFC, Nalanda, petitioner never deposited balance CMR within cut off date.

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, 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 triggeredalthough 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 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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