IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.27292 of 2022

Arising Out of PS. Case No.-5 Year-2016 Thana- GOVERNMENT OFFICIAL COMP.
District- Patna

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Paras Kumar Bansal Proprietor Of M/S Paras Lubricants Ltd, 115 Sf, Su Block, 2nd Floor, Pitampura, Delhi - 110034, R/O- Su- 115, 2nd Floor, Pitampura, Near Govt. School, Delhi, Maurya Enclave, North West Delhi, Delhi - 110034.

... ... Petitioner/s

Versus

Enforcement Directorate, Government of India, Patna Zonal Office, 1st Floor, Chandpura Place, Bank Road, West Gandhi Maidan, Patna - 800001, Bihar.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Syed Arshad Alam, Advocate
		Mr. Syed Asfar Alam, Advocae
		Mr. Anjum Perveen, Advocate
		Mr. Prafulla Kumar Jha, Advocate
For the Opposite Party/s	:	Mr. K.N.Singh, A.S.G
		Mr. Abhay Shankar Jha, AC to ASG

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

CAV ORDER

9 29-03-2023

Heard Mr. Syed Arshad Alam, learned counsel appearing on behalf of the petitioner and Mr. K.N. Singh, learned Additional Solicitor General of India.

Prosecution case is as:- earlier the Prosecution Complaint No. 02 of 2018 in the instant case had been filed against the 10 accused persons, including the officials of the Bank of India, G.B. Road, Gaya and further investigation was in progress. First supplementary Complaint No. 11 of 2018 had been filed against 4 accused persons and on further investigation this supplementary complaint filed by the Assistant Director, Directorate of Enforcement under Section 45 of the PML Act and the cognizance has been taken on 05.06.2020 for the offence punishable under Section 4 of the Prevention of Money Laundering Act (hereinafter in short referred to as 'PML Act') against the 12 accused persons, including the present petitioner.

This anticipatory bail application has been filed on behalf of the accused petitioner, namely Paras Kumar Bansal, who is the proprietor of M/s Paras Lubricants Limited, apprehends his arrest in this Special Case (PMLA) No. 01 of 2020 arising out of Special Case (PMLA) No. 02 of 2018 in ECIR No. PTZO/05/2016 under Section 3 and Section 4 of the PML Act.

As per the prosecution case, the allegation against the petitioner/proprietor of M/s Paras Lubricants Ltd. is that proceeds of crime amounting to Rs. 1,04,02,350/- originating from Bank accounts held with Bank of India, G.B. Road, Gaya have merged in the Bank A/c No. 018484600000212 of M/s Paras Lubricants Ltd. with Yes Bank, Pitampura, New Delhi during the period from July 2016 October, 2016. During the investigation, it is established that the petitioner Paras Kumar Bansal, Proprietor of M/s Paras Lubricants Ltd. is knowingly involved in acquisition, concealment and transfer of proceeds of crime and is knowingly involved in process or activity connected with proceeds of crime and projection of the same as untainted.

The accused, Motilal, Director of M/s MTI Cotton Mills Pvt. Ltd., Gaya in connivance with Bank officials of Bank of India, G.B. Road Branch, Gaya, mis-utilized the Bank accounts held in his name/firm/family/members/relatives in the name of complainants Sri Sahshi Kumar and Sri Rajesh Kumar and their firm/brothers/wife, in as much as substantial cash deposits Rs. 44.79 crores illegally made in the Bank accounts during the period from July 2016 to November 2016 and then cash deposits were transferred to the Bank accounts of different fake and fictitious entities by way of forging documents. The cash so deposited and transferred became proceeds of crime and its transfer to other accounts clearly represents the process of integration of the proceeds of crime with the mainstream economy.

Mr. Syed Arshad Alam, learned counsel appearing on behalf of the petitioner has argued that the petitioner is innocent and has been falsely implicated in this case. He submits that the prosecution story is false and concocted and the name of the petitioner was not mentioned in the earlier FIR bearing No. 339/2016 and 340/2016 both dated 13.12.2016 filed in Civil Lines P.S. Gaya, neither was he named in the original complaint petition vide Special Case (PMLA) No. 02/2018, the name of the petitioner was added as an accused only in the second supplementary complaint case vide Special Case (PMLA) No. 01/2022.

Learned counsel appearing on behalf of the petitioner further submits that it has been alleged that the petitioner received money amount to Rs. 1,04,02,350/- originating from bank accounts held with Bank of India, G.B. Road, Gaya inA/c No. 01848400000212 of M/s Paras Lubricant Ltd. held with Yes Bak, Pritampura, New Delhi during the period from July 2016 to October 2016. He submits that the petitioner has received this money from M/s Sunil trading Company and M/s Sandeep traders in return of goods sold by them. It is next submitted that at the time of questioning the petitioner had produced the list of purchase order and payment received to the complainant but the prosecution has failed to disclose the name and now he apprehends his arrest in this manifested case.

He further submits that the petitioner is doing his business for a long time but not a single case has been lodged against him previously by any financial institutions. He submits that the respondents has failed to disclose the fact that the payment of Rs.15,00,000/- made to the petitioner on 08.07.2016 after being layered through the bank A/c No. 113805501029 in the name of Sunil Trading Company held with ICICI Bank, Fatehpuri New Delhi was not a one of transactions have been taken place between the petitioner and M/s Sunil Trading Company.

He submits that the petitioner has produced the record of purchase order to the respondent but the respondent deliberately omitted the same from complaint petition in order to frame this petition under Section 4 of the PMLA by putting the burden of proof under Section 24 of the PMLA on the petitioner. He submits that one of the petitioner’s property has already been attached by the respondents and, therefore, there is no chance of petitioner running away and therefore he deserves the anticipatory bail. He further submits that the charge-sheet has been submitted and the petitioner has cooperated in the investigation and the petitioner was not apprehended by the police.

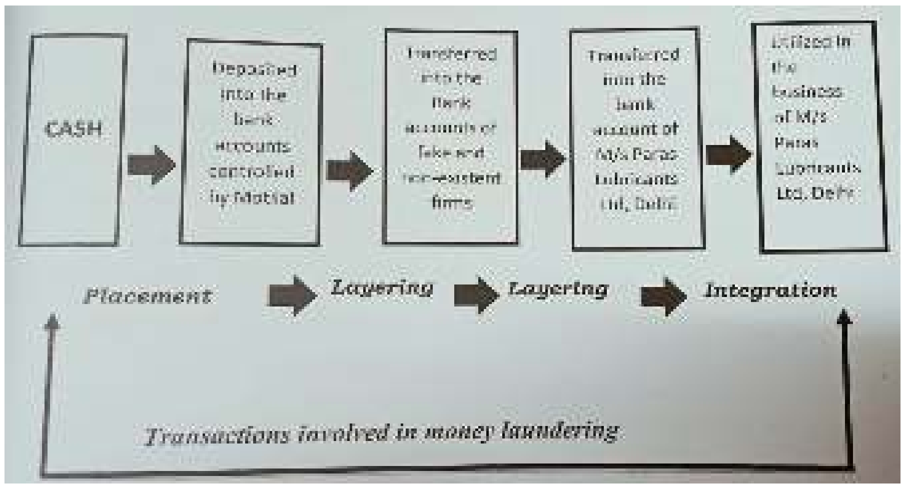
Mr. K.N. Singh, learned A.S.G. assisted by Mr. Abhay Jha opposed the anticipatory bail of the petitioner by submitting that illegal and unaccounted cash deposited by one Motilal in the bank accounts of informants, these firms are controlled by Motilal held with Bank of India, G.B. Road, Gaya, by misuse of the accounts without the knowledge of account holders in connivance with Bank official and it was found that out of the entire proceeds of crime an amount of Rs. 1.04 crore originating from the bank accounts held with the Bank of India, G.B. Road Branch, Gaya, has been illegally transferred into the bank account of petitioner after layering through the bank accounts of firms namely M/s Sandeep Traders, Delhi and M/s Sunil Traders Company, Delhi. However, during the investigation, it was found that these firms were fake and have not been operating from the addresses as mentioned in the bank accounts or in the sales invoices of petitioner.

Learned A.S.G. further submits that during the investigation under PMLA, it is established that the petitioner is knowingly involved in acquisition, concealment and transfer of proceeds of crime and projection of the same as untainted. He submits that the petitioner has failed to discharge the burden of proof cast upon him under Section 24 of the PMLA as he could not produce the copy of purchase order/sales orders in respect of transactions made with the firms namely of M/s Shri Ram

Overseas, Delhi, M/s Radha Trading Company, Delhi, M/s Rajesh Trading Company Delhi, M/s Sandeep Traders Delhi and M/s Sunil Trading Company, Delhi and has created false evidence by using sales invoice and other documents in the name of these firms and in course of investigation it has been found that these firms are fake and non-existence and M/s Paras Lubricants, Delhi has no business transactions with these firms since April 2017 i.e. “after initiation of investigation under PMLA”.

It is logical to conclude that the M/s Paras Lubricants Ltd., New Delhi, is not involved in any genuine business transaction in respect of Rs.104.02 lakh received in the bank account mentioned above. Regarding receipt of Rs. 104.02 lakh during July 2016 to October 2016, in the bank account of his firm M/s Paras Lubricants Ltd., New Delhi, Shri Paras Kumar Bansal has no credible, verifiable explanation. Thus, M/s Paras Lubricants Ltd., New Delhi, is consciously and knowingly involved in concealment, transfer and acquisition of proceeds of crime and is in possession of property involved in money laundering.

This is depicted schematically below:-



Learned A.S.G. further submits that the petitioner Proprietor of M/s Paras Lubricants Ltd., New Delhi could not produce the copy of purchase orders in respect of transaction made with the firms namely M/s Sandeep Traders, New Delhi and M/s Sunil Trading Company, New Delhi, at the time of recording of statement under Section 50 of the PMLA on 05.02.2018 and submitted that he will send the same in due course. However, he had not submitted the copies of purchase order till the date of filing of prosecution complaint and further created false purchase orders in the name of M/s Sandeep Traders, New Delhi and M/s Sunil Trading Company, New Delhi. Therefore, he is barred from relying on the documents which were not submitted and verified during the course of investigation.

The Parliament has amended the Section 45 of PMLA vide amendment under the Finance Act, 2018 (13 of 2018) w.e.f 01.04.2018. As per amended Section 45 of the PMLA, the offence are cognizable and non-bailable.

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-

(1) the Public Prosecutor has given an opportunity to oppose the application for such release; and

(2) 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:…

(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 1074) or any other law for the time being in force on granting of bail.

Elaborating on the mandate of Section 45 of the PMLA, the Hon'ble Supreme Court in ***Rohit Tandon vs. Directorate of Enforcement***, ***(2018) 11 SCC 46*** held that:

> ***19.*** *The sweep of Section 45 of the 2002 Act is no more res intergra. In a recent decision of*

this Court in Gautam Kundu v. Directorate of Enforcement [Gautam Kundu v. Directorate of Enforcement, (2015) 16 SCC 1 : (2016) 3 SCC (Cri) 603] , this Court has had an occasion to examine it in paras 28-30. It will be useful to advert to paras 28 to 30 of this decision which read thus :

"28. Before dealing with the application for bail on merit, it is to be considered whether the provisions of Section 45 of PMLA are binding on the High Court while considering the application for bail under Section 439 of the Code of Criminal Procedure. There is no doubt that PMLA deals with the offence of money laundering and Parliament has enacted this law as per commitment of the country to the United Nations General Assembly. PMLA is a special statute enacted by Parliament for dealing with money laundering. Section 5 of the Code of Criminal Procedure, 1973 clearly lays down that the provisions of the Code of Criminal Procedure will not affect any special statute or any local law. In other words, the provisions of any special statute will prevail over the general provisions of the Code of Criminal Procedure in case of any conflict.

29. Section 45 of PMLA starts with a non obstante clause which indicates that the provisions laid down in Section 45 of PMLA will have overriding effect on the general provisions of the

Code of Criminal Procedure in case of conflict between them. Section 45 of PMLA imposes the following two conditions for grant of bail to any person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule of PMLA:

(I) That the prosecutor must be given an opportunity to oppose the application for bail; and

(ii) That the court must be satisfied that there are reasonable grounds for believing that the accused person is not guilty of such offence and that he is not likely to commit any offence while on bail.

30. The conditions specified under Section 45 of PMLA are mandatory and needs to be complied with, which is further strengthened by the provisions of Section 65 and also Section 71 of PMLA. Section 65 requires that the provisions of CrPC shall apply insofar as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of PMLA shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PMLA has an overriding effect and the provisions of CrPC would apply only if they are not inconsistent with the provisions of this Act. Therefore, the conditions enumerated in Section 45 of PMLA will have to be complied with even in respect of an application for *bail made under Section 439 CrPC. That coupled with the provisions of Section 24 provides that unless the contrary is proved, the authority or the Court shall presume that proceeds of crime are involved in money laundering and the burden to prove that the proceeds of crime are not involved, lies on the appellant."*

(emphasis supplied)

Further, the Hon'ble Supreme Court in Assistant ***Director, ED vs. V C Mohan*** in ***SLP (Crl) no. 8441/2021*** vide order dated 04.01.2022 has hold that once the prayer for anticipatory bail is made in connection with offence under the PML Act, the underlying principles and rigors of Section 45 of the PMLA must get triggered-although the application is under Section 438 of the Code of Criminal Procedure.

Further, the three judge Bench of Apex Court in ***Vijay Madanlal Choudhary & Ors v. Union of India & Ors. (SLP (Crl.) 4634 of 2014*** delivered on 27.07.2022) has held that twin conditions shall apply irrespective of the nature of proceedings i.e. regular bail or anticipatory bail. The Hon'ble Supreme Court held as follows:-

"(xiii) (a) The reasons which weighed with this Court in Nikesh Tarachand Shah for declaring the twin conditions in Section 45(1) of the 2002 Act, as it stood at the relevant time, as

unconstitutional in no way obliterated the provision from the statute book; and it was open to the Parliament to cure the defect noted by this Court so as to revive the same provision in the existing form.

(b) We are unable to agree with the observations in Nikesh Tarachand Shah distinguishing the enunciation of the Constitution Bench decision in Kartar Singh' and other observations suggestive of doubting the perception of Parliament in regard to the seriousness of the offence of money-laundering, including about it posing serious threat to the sovereignty and integrity of the country.

(c) the provisions in the form of Section 45 of the 2002 Act, as applicable post amendment of 2018, is reasonable and has direct nexus with the purposes and objects sought to be achieved by the 2002 Act and does not suffer from the vice of arbitrariness or unreasonableness.

(d) as regards the prayer for grant of bail, irrespective of the nature of proceedings, including those under Section 438 of the 1973 Code or even upon invoking the jurisdiction of Constitutional Courts, the underlying principles and rigous of Section 45 may apply."

He further submits that the petitioner is deliberately evading the process of law and he has deliberately avoided several summons issued under Section 50 of the PMLA and had not disclosed the truth during the investigation and hence he does not deserve the privilege of anticipatory bail.

Considering the facts and circumstances of case, I am not inclined to enlarge the petitioner on anticipatory bail in connection with Special Case (PMLA) No. 01 of 2020 arising out of Special Case (PMLA) No. 02 of 2018 in ECIR No. PTZO/05/2016.

The prayer for anticipatory bail of the petitioner is hereby rejected.

(Anjani Kumar Sharan, J)

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