

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28688 of 2023

Arising Out of PS. Case No.-1 Year-2018 Thana- E.C.I.R (GOVERNMENT OFFICIAL)
District- Patna

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Motilal Ram Son of Shobhi Ram R/O-Lakhnauri, P.O.-DEVARIA, P.S.-
DEVARIA, Distt.-MUZAFFARPUR

... .. Petitioner/s

Versus

Union of India Through, Assistant Director (PMLA), Directorate of
Enforcement, Patna, Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Hemant Kumar, Advocate

For the Opposite Party/s : Mr. Anshay Bahadur Mathur, CGC

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

3 24-07-2023 Heard the parties.

2. The petitioner has preferred this application for grant of anticipatory bail in connection with Special Trial No. (PMLA) 02 of 2020 under Section 45/44 of the Prevention of Money Laundering Act, 2002 and for commission of offence under Section 4 of the PMLA, 2002 (hereinafter referred to as ‘P.M.L.Act’).

3. As per the prosecution case, a complaint was filed under the P.M.L.Act by the Assistant Director, Directorate of Enforcement, Government of India stating therein that petitioner is brother of co-accused Anil Ram and he has acquired property in his name from the proceeds of crimes generated by co-accused Anil Ram. It is further alleged that the petitioner failed



to provide any explanation for the source of cash utilized for the acquisition of properties in his name thereby alleging that he knowingly concealed the proceeds of crime and utilized the same for acquisition of properties in his name.

4. It is submitted by counsel appearing on behalf of petitioner that the allegation levelled against the petitioner is false, fabricated and concocted. Petitioner has been falsely implicated in this case merely because he happens to be brother of co-accused Anil Ram. As a matter of fact, petitioner is a working as a mason and having a sufficient income to meet his family needs, education to his children and paying for the treatment of diseases having a savings of Rs. 15,000/- and the petitioner has no idea about the whereabouts of money coming to Anil Ram and he was totally unaware of the fact that the money which Anil Ram is using, coming from proceeds of crime. Petitioner is living separately with his family and having no connection with Anil Ram because there was partition in the family and petitioner has purchased a piece of land out of Rs. 28,000/- in the year 2009. It is further submitted that the prosecution has failed to bring on record any incriminating evidence against the petitioner regarding his involvement in acquisition, concealment, transfer of proceeds of crime as well



as he was in any manner connected with scheduled offence and the accused persons of scheduled offence.

5. Lastly, it is submitted on behalf of petitioner that while laying down the principles with regard to grant of bail, the Hon'ble Supreme Court in the case of **Aman Preet Singh vs. CBI, through Director (2021 SCC Online SC 941 paragraph 9 & 11)** upheld the principles of grant of bail as stated in the case of **Siddharth vs. State of U.P. & Anr. (2021 SCC Online SC 165 paragraph 11 to 14)** and it held that if an accused has not been arrested during investigation, even when it was open to the investigating agency to arrest the accused, and the accused has fully cooperated during investigation, he is entitled to the privilege of bail.

6. Learned counsel appearing on behalf of Union of India vehemently opposes the prayer for anticipatory bail of petitioner and submits that petitioner is the brother of co-accused Anil Ram and he is knowingly involved in 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. Therefore, petitioner has committed the offence of money laundering, as defined under Section 3 of the P.M.L.Act and punishable under Section 4 of



the P.M.L.Act. Hence, he has been made accused in the complaint filed under the Money Laundering Act for commission of offence alongwith his brother Anil Ram and others. Cognizance on the same has been taken by the Special (PMLA) Court, Patna on 04.05.2020.

7. Learned counsel for Union of India further submits that during course of investigation, it has come that co-accused Anil Ram along with others have been charged for, inter-alia, indulging in criminal conspiracy (120B IPC), offences related to Arms Act (Sections 25, 26 & 27 of the Arms Act), offences related to Unlawful Activities (Prevention) Act, being a member of unlawful association, indulging in unlawful activities, raising fund etc. (Section 10, 13, 16, 18, 19 & 20 of the Unlawful Activities (Prevention) Act). Anil Ram is habitual offender who has indulged in heinous offences like murder, attempt to murder, offences under UAPA, offences under Arms Act, etc. The offences allegedly committed by Anil Ram are covered as 'Scheduled offences' under Para 1, Para 4 and Para 5, in Part 'A' of the Schedule to the Prevention of Money Laundering Act, 2002 (as amended), accordingly proceedings under PMLA has been initiated. It is next submitted that brother of the petitioner, Anil Ram, is Commander of Muzaffarpur-Vaishali Sub-Zonal



Committee of band naxal outfit Bhartiya Communist Party (Maoist). During investigation under PMLA, it is found that he has acquired immovable properties in the name of his family members out of proceeds of crime generated through collection of levy, extortion etc. His family members including the petitioner have knowingly assisted and acted as a front to conceal the source of investment i.e. proceeds of crime generated by Anil Ram so that property acquired out of such proceeds of crime can be projected as untainted. On the basis of material available on records and details of properties available with this Directorate, properties worth Rs. 54.14 lacs being proceeds of crime have been identified and have provisionally been attached vide PAO No. 15/2018 dated 30.11.2018 wherein one immovable property amounting Rs. 59,407/- (Fifty Nine Thousand Four Hundred Seven Only) are found to be acquired in the name of the 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. In view of the facts and circumstances, as stated hereinabove, in view of the allegations levelled against the petitioner, the materials on record as also in view of section 45 of the P.M.L. Act 2002, in the opinion of this Court, the petitioner has not made out a case for grant of anticipatory bail and as such, the application stands rejected.

(Prabhat Kumar Singh, J)

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