IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34131 of 2022

Arising Out of PS. Case No.-4 Year-2018 Thana- GOVERNMENT OFFICIAL COMP. District- Patna

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Smt. Jayshree Thakur, aged about 64 years, Female, Wife of Dr. Rajesh Kumar Choudhary, Resident of 404, Sundaram Apartment, Tilka Manjhi Chowk, P.S. - Barari, District - Bhagalpur.

... ... Petitioner/s

Versus

The Union of India through the Directorate of Enfocement, Govt. of India (Prevention of Money Laundering Act, Government of India) 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.Pranav Kumar Jha, Adv
For the Opposite Party/s : Dr. K.N.Singh (A.S.G.)

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
Date : 04-09-2023

Heard Mr. Pranav Kumar Jha, learned counsel for the petitioner. Mr. K. N. Singh learned Additional Solicitor General has made submissions on behalf of the Union of India.

2. The matter was earlier heard on 1st September, 2023 as a tied up matter and adjourned to today for further consideration.

3. The petitioner seeks bail in connection with Special Trial No. (PMLA) 05 of 2021, arising out of ECIR No. PTZO/04/2018, dated 24.05.2018, registered for the offence

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punishable under Section 4 of the Prevention of Money-Laundering Act, 2002 (hereinafter referred to as 'the PMLA').

4. Several First Information Reports (for brevity 'FIR') were lodged in connection with fraudulent transfers /misappropriation of huge sums of government money under a conspiracy between government officials and employees, Bank officials and employees, office bearers and members of Srijan Mahila Vikash Sahyog Samiti Limited (for brevity '*SMVSSL*') and other accused persons, popularly known as "Srijan Scam". The petitioner is made an accused in following such cases:

(i) Special Case No. 17 of 2013 for the offences under Sections 7, 8, 9, and 13 r/w Section 13(1)(d) of Prevention of Corruption Act,

(ii) Special Case No. 1 of 2020, arising out of R. C. Case No. 5(A)/2018 lodged under Section 409, 467, 471 and 120(B) of the IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act,

(iii) Special Case No. 2 of 2019, arising out of R.C. Case No. 9(A)/2018 lodged u/S 409, 420, 468, 471 & 120(B) of the IPC and Section 13(2) r/w Section 13(1)(c) and (D) of the Prevention of Corruption Act, 1988,

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(iv) Special Case No. 41 of 2013 arising out of E.O.U. P.S. Case No. 29 of 2013 lodged U/S 13(2) r/w Section 13(1)(e) of the Prevention of Corruption Act;

(v) Special Case No. 02 of 2021 arising out of R.C. No. 13(A)/2017 lodged U/S 120(B), 409, 467, 468, 471 of the IPC and U/S 13(2) r/w Section 13(1)(D) of Prevention of Corruption Act.

5. The offences being investigated were found to be scheduled offences as per the provisions of PMLA and, accordingly, investigation was taken up by the Enforcement Directorate (ED) under the provisions of the PMLA for ascertaining the proceeds of crime and for filing complaints. The ECIR No. PTZO/04/2018, thus, came to be recorded against the *SMVSSL* and its office bearers, government officials and employees, bank officials and employees and others. Investigations revealed huge sums siphoned from the Government treasury and transferred to the Bank account of SMVSSL. Government officials were also found involved.

6. The petitioner, as per allegation, was the District Land Acquisition Officer, Banka (DLAO) and was found to have conspired with officials of the Bank of Baroda and Indian Bank and office bearers of the '*SMVSSL'* along with other unknown

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persons in misappropriation of Government funds running into crores of Rupees (82.10 crores) into the accounts of *'SMVSSL'*. She is stated to be very close to Late Manorma Devi, who was the prime accused at the centre of the entire scam and was Secretary of *'SMVSSL'* since its inception, till her death on 13.02.2017. The Cheating and fraudulent misappropriation of Government funds by late Manorma Devi was in collusion with several Government officials, bank officials and other individuals, which includes the instant petitioner also. The petitioner is alleged to have received pecuniary benefits to the tune of Rupees 20,00,000/- (Twenty Lakh) for booking of a flat in Emerald-I-402, Gardenia Glamour Phase-II at Gaziabad, Uttar Pradesh. The said flat was alleged to have been acquired out of the proceeds of crime and were attached by a provisional attachment order on 29/05/2020.

7. Thereafter, Original Complaint No. 1313 of 2020 was filed before the Adjudicating Authority on 26/06/2020 for confirmation of the provisional attachment order in compliance with the principles of natural justice, inherent under Section 8 (1) of the PMLA. The same was, subsequently, confirmed by the Adjudicating Authority, PMLA. The prosecution complaint vide Special Case No. 5 of 2021 was then filed before the Special

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Court on 04/10/2021, in which, cognizance has been taken on 04/10/2021 itself. The petitioner was, at that point of time, already in custody in a predicate offence.

8. In this case, petitioner is in custody since 29/10/2021. Her prayer for bail was rejected by the Special Judge on 09/05/2022. She is, thus, before this Court.

9. It is submitted by learned counsel for the petitioner that insofar as the allegation of petitioner, conspiring with bank officials and officials of the SMVSSL, there is no material on record to suggest that she was responsible for transfer of any funds from the account of the District Land Acquisition Officer (DLAO) , Banka. Since, it is alleged that petitioner was the then DLAO, Banka, opening of the account in the name of the DLAO, Banka, *per se* cannot be considered to be an offence.

10. The petitioner had not booked the flat at Emerald, Ghaziabad and not paid any amount for booking of this flat. The same is obvious from the complain also which shows amounts to the tune of Rs. 20,00,000/- (twenty lacs) to have been deposited by SMVSSL, one Babita Mishra and one Manorama Devi. Petitioner has no concern with the said flat. It is thus submitted that the petitioner has not received any pecuniary benefits from the proceeds of crime. The said allegation is false,

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but even if taken to be true, then the benefits of the proceeds of the crime received by the petitioner is much below the amount of Rupees 1,00,00,000/- (One Crore). Having regard to the first Proviso to Section 45 of the PMLA, since the petitioner is accused of deriving benefits of the proceeds of crime below Rupees 1,00,00,000/- (One Crore), her bail application cannot be subjected to the rigors of Section 45(1)(ii) of the PMLA.

11. The petitioner is also a woman accused, aged about 65 years. She is also a sick person, which is apparent from Annexure-2 of the bail application being the discharge summary, showing that the petitioner, after suffering a heart attack, was admitted for treatment in between 02-12-2020 and 17-12-2020. In the instant case, the petitioner has also remained in custody now for more than 22 months. Petitioner is not a flight risk. The petitioner's prayer for bail in the above circumstances is to be considered by this Court on the parameters as obtaining under the proviso to Section 45 of the PMLA, by virtue of being a women as also sick.

12. Learned counsel for the petitioner has relied upon decision of the Apex Court in the case of ***Directorate of Enforcement versus Preeti Chandra***, having neutral citation No. ***SLPR 7409/2023***, also reported in ***2023 SCC Online SC***

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930 whereby and whereunder, the Hon'ble Apex Court has declined to interfere with the exercise of discretion by the Delhi High Court, in granting bail to a women accused of offence under the PMLA. The Delhi High Court had exercised jurisdiction to grant bail to the women accused by applying the triple test, as per first proviso to sub-section 1 of Section 437 of the Cr.P.C. It had clearly held that the twin test as per Section 45 of the PMLA will not be applicable to the woman accused. In consideration of these submissions, it is prayed that the petitioner be released on bail.

13. Learned Additional Solicitor General appearing for Union of India submits that the bail application is without merit. The applicability of twin conditions, set out in Section 45 (1) has to be applied while considering bail *qua* the offence under the PMLA. The issue is settled in view of the decision of the Apex Court in the case of ***Vijay Madanlal Choudhary and others versus Union of India and others*** reported in ***2022 SCC OnLine SC 929***.

14. Investigation has revealed that the petitioner is a Government Employee, and beneficiary of the proceeds of crime, which involves several crores of rupees. The petitioner, therefore, cannot derive any advantage under the first proviso to

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Section 45 of the PMLA on basis of her self serving assertion that she is accused of having received less than Rs. 1 crore, i.e,. Rs. 20,00,000/- (Twenty Lakh) of the proceeds of the crime.

15. The offence of money laundering is a grave offence, such deep rooted economic offences pose a challenge to the economy and needs to be dealt with severity. Investigation into the various transactions in relation to the offence are still going on. During the petitioner's posting as District Land Acquisition Officer, Banka (DLAO) several withdrawals and deposits of huge amounts running into crores have taken place from the account of D.L.A.O and the '*SMVSSL'*. This Court, therefore, should not grant the petitioner the privilege of bail; the twin tests based on the rigours under Section 45(1) of the PMLA, having not been satisfied.

16. Having heard the rival parties, this Court would take into consideration the bar to grant of bail under Section 45 of the PMLA. The same clearly provides that a person accused of an offence under the PMLA shall not be released on bail or on his own bond. It is only if the Court, after giving opportunity to the Public Prosecutor to oppose the application for such release, is satisfied that there are reasonable grounds for believing that he is not guilty of such offfence; and not likely to commit any

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offence while on bail, that bail can be granted to the person accused of an offence under the PMLA.

17. Insofar as the instant case is concerned, this Court finds that the petitioner accused is a woman. She has enclosed documents showing her treatment, after suffering a hear attack. She is stated to be 64 years old. These facts have to be viewed keeping in background, the first proviso to Section 45 of the PMLA, which reads as follows:

> *"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 of money-laundering a sum of less than one crore rupees] may be released on bail, if the Special Court so directs:"*

18. The Court accordingly has to consider as to what approach is required while considering a prayer for grant of bail to an accused who is covered by proviso to Section 45 of the PMLA. While according such consideration, this court is bound by decision of the Hon'ble Apex Court in the case of ***Directorate of Enforcement versus Preeti Chandra***, having *neutral citation No.* ***SLPR 7409/2023***, also reported in ***2023 SCC Online SC 930***. The Hon'ble Apex Court by the said decision has denied to interfere with the order passed by the Delhi High Court granting bail to woman accused by applying

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the triple test, as contemplated under Section 437 Cr.P.C. The Delhi High Court had held the twin condition of Section 45 of PMLA not to be applicable to the applicant (woman accused). Such grant of bail came up for consideration before the Hon'ble Apex Court in the case of ***Directorate of Enforcement versus Preeti Chandra*** (*supra*). Relevant extract of the order of the Hon'ble Apex Court reads as follows:-

> *"…...**2.** The proviso to Section 45 of the Prevention of Money Laundering Act, 2002 confers a discretion on the Court to grant bail where the accused is a woman. Similar provisions of Section 437 of the Code of Criminal Procedure 1973 have been interpreted by this Court to mean that the statutory provision does not mean that person specified in the first proviso to sub-section (1) of Section 437 should necessarily be released on bail. [see Prahlad Singh Bhati v. NCT, Delhi, (2001) 4 SCC 280].*
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> ***3.** Considerations which weigh in the grant of bail are distinct from those which are relevant to the adjudication of an application for cancellation of bail. The respondent has undergone over 620 days of custody. Since in the exercise of its discretion, the High Court has come to the conclusion that the respondent should be released on bail, we are not interfering*

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> *with the order under Article 136 of the Constitution.....”*

19. From the decision of the Hon’ble Apex Court in the case of ***Directorate of Enforcement vs. Preeti Chandra*** (*supra*) it is apparent that the proviso to Section 45 of PMLA confers discretion on the court to grant bail where the accused is woman, similar to the proviso to Sub-section 1 of Section 437 Cr.P.C., as per decision of the Hon’ble Apex Court in the case of ***Prahlad Singh Bhati vs. NCT, Delhi*** reported in ***(2001) 4 SCC 280***. The court, therefore, has to consider the petitioner’s prayer for bail in terms of the decision of the Hon’ble Apex Court in the case of ***Prahlad Singh Bhati*** (*supra*).

20. In view of the legal position based on order of the Hon’ble Apex Court, this Court would take into consideration the petitioner’s submissions that the alleged amounts of proceeds of crime received for booking of the flat is to the tune of Rs. 20 lakhs. She has not directly received any pecuniary benefits being proceeds of crime. She has no knowledge about the transaction alleged to the tune of Rs. 20,00,000/ (Twenty Lakh) which even as per prosecution case has been remitted by SMVSSL, Babita Mishra and Manorama Devi and not by the petitioner and the amount remitted is also not based on any

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disclosure to the petitioner of details of the alleged flat, for which, the amount was remitted. The builders has never informed the petitioner and has never approached the petitioner for handing over possession of the alleged flat. The allegation of conspiring with the bank officials or officials of SMVSSL are vague and general.

21. The petitioner is already on bail in the predicate offence. Learned counsel for the petitioner also places reliance on order dated 24-04-2023 passed by a co-ordinate Bench of this Court granting bail to another female co-accused, namely, ***Indu Gupta*** in Cr. Misc. No. 69939 of 2022. The petitioner's custody by now is more than 22 months.

22. The Court thus finds that for the purposes of bail, the petitioner has provided *prima facie* explanation in respect of the allegations. Whether the same is sufficient to ensure the petitioner's acquittal or not is yet to be considered at the trial. *Mens rea* is also another issue which has to be established on the basis of material to be considered at the trial.

23. It is also obvious from the complain filed under the Act that the petitioner had made her statement under Section 50 of the PMLA and there is no allegation of her non-cooperation with the Authorities in the course of investigation. She also

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undertakes to cooperate in the investigation, as and when required.

24. Considering the submissions advanced by the learned counsels, the facts and circumstances noted above, the petitioner's statement under Section 50 PMLA, allegations with respect to the petitioner in the complaint filed under PMLA and the legal position regarding parameters of consideration based on decision of the Hon'ble Apex Court in the case of ***Directorate of Enforcement versus Preeti Chandra*** (supra) as also custody of the petitioner, which by now is more than 22 months, this Court is inclined to allow the petitioner's prayer for bail. The Court would also record that consideration, recorded above is for the limited purposes of grant of bail and the same may not be deemed as an expression of any opinion by this Court on the merits of the allegations, which are yet to be determined at the trial or for any other purposes.

25. Let the petitioner, above named, be released on bail on furnishing bail bond of Rs. 50,000/- (Fifty thousand) with two sureties of the like amount each to the satisfaction of the learned Sessions Judge/Special Judge (PMLA), Patna, in connection with Special Trial No. (PMLA) 05 of 2021 arising out of ECIR No. PTZO/04/2018, dated 24.05.2018, subject to

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the following conditions:-

(i) That one of the bailors will be a close relative of the petitioner who will give an affidavit giving genealogy regarding relationship with the petitioner.

(ii) That the petitioner will appear/ be well represented before the Court on each date and if she fails to do so on two consecutive dates, her bail bond will be liable to be cancelled.

(iii) The petitioner shall not leave the country without permission of the Trial Court.

(iv) The petitioner shall join the investigation as and when called by the I.O. concerned;

(v) The petitioner shall provide her mobile number to the Investigating Officer (IO) concerned at the time of release, which shall be kept in working condition at all times. The petitioner shall not switch off, or change the same without prior intimation to the IO concerned, during the period of bail;

(vi) In case, she changes her address, she will inform the IO concerned;

(vii) The petitioner shall not indulge in any criminal activity during the bail period;

(viii) The petitioner shall not communicate with or intimidate or influence any of

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the prosecution witness or tamper with the evidence of the case.

26. This Court would expect that the petitioner's counsel would honour his undertaking in the instant proceedings regarding supply of the requisite court fee etc., within two weeks from the date he is called upon to do so by the office.

(Madhuresh Prasad, J)

Raj kishore/
Shyam Bihari/-

AFR/NAFR	NAFR
CAV DATE	N/A
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