IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.36165 of 2022

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

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DEO SHANKAR MISHRA, Son of Late Dayanand Mishra, Resident of Village - Ranti, PO- Ranti, P.S.- Rajnagar, Distt.- Madhubani, At present - Bank Colony, Lane No.8, Gola Road (Noth of Bailey Road), P.s.- Danapur, Distt.- Patna.

... ... Petitioner/s

Versus

The Union of India through the Directorate of Enforcement, Govt. of India (Prevention of Money Laundering Act, Govt. 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. Subodh Kumar Jha, Advocate Mr. Pranav Kumar Jha, Advocate
For the Opposite Party/s	:	Mr. K.N. Singh (A.S.G.) Mr. Manoj Kumar Singh, CGC Mr. Devansh Shankar Singh, JC to ASG Mr. Sriram Krishna, Adv.

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 21-06-2023

1. Heard learned counsel for the petitioner and the learned Additional Solicitor General appearing for the Union of India.

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

3. 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. 04 of 2018, under Sections 409, 420, 467, 468, 471 and 477A of the Indian Penal Code and Under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, in which the petitioner is on bail.

(ii) Special Case No. 04/2020, under Sections 409, 420, 467, 468, and 471 of the Indian Penal Code and under Section 13(2) read with 13(1)(c) & 13(1)(d) of the Prevention of Corruption Act, in which the petitioner is on Bail.

(iii) Special Case No. 12/2020 under Sections 34/120B, 409, 420, 467, 468, and 471 of the Indian Penal Code and Under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, in which the petitioner is on Bail.

(iv) Special Case No. 13/2020 under Sections 34/120B, 409, 420, 467, 468 and 471 of the Indian Penal Code and Under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, in which the petitioner is on bail.

(v) Special Case No. 02 of 2021 arising out of R.C. No. 13(A)/2017 lodged U/S 120B, 409, 467, 468 and 471 of I.P.C and U/S- 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act, in which the petitioner is on bail.

4. 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.

5. Allegations against the petitioner is that he was the then Branch Manager of the Indian Bank, Bhagalpur. Huge

government funds were allegedly transferred to the account of *SMVSSL*. He was very actively associated with Late Manorma Devi, who is stated to be the prime accused at the centre of the entire scam. She was Secretary of *SMVSSL* since its inception till her death on 13.02.2017. The cheating and fraudulent misappropriation of the Government funds by late Manorma Devi was in collusion with several Government officials, bank officials and other individuals which includes the instant petitioner also. He has received 20 lakhs from the account of *SMVSSL* for purchase of flat in Emerald II/502, Gardenia Glamour Phase-II at Gaziabad, Uttar-Pradesh in the name of Shashi Lata Mishra. The said amount was paid to the petitioner in lieu of his act of facilitating transfer of Government funds to *SMVSSL* through the bank in which he was the Manager. The proceeds of crime have been invested by petitioner in acquiring property in the name of his wife so as to integrate the amount, being proceeds of crime in the main stream economy. The petitioner has assisted late Manorma Devi in money laundering and, therefore, he cannot deny his liability for the crime under Section 3 of the PMLA.

6. The said flat was alleged to have been acquired out of the proceeds of crime and was attached by a provisional

attachment order no. 04 of 2021 dated 30-06-2021.

7. Thereafter, Original Complaint No. 1498 of 2021 was filed before the Adjudicating Authority on 26/07/2021 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. The prosecution complaint vide Special Case No. 5 of 2021 was then filed before the Special 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, he is in custody since 29/10/2021. His prayer for bail was rejected by the Special Judge on 09/05/2022. He is, thus, before this Court.

9. The learned counsel for the petitioner submits that the petitioner is innocent and has committed no offence. The transaction of Rs. 20 lakhs made from the account of *SMVSSL* to Gardenia is not known to the petitioner. He has discharged his duties *bona fide* in the Bank and never misused and abused his official capacity. The petitioner has never booked nor received possession of the flat in question. Petitioner's implication is on hypothetical transfer of Rs. 20 lakhs from *SMVSSL* to Gardenia

builders. There is no flight risk.

10. The learned Additional Solicitor General submits that from the material in the investigation as noted in the complaint filed under Section 44 of the PMLA, it is apparent that while posted in the Indian Bank as its Manager in Bhagalpur, the petitioner has acquired three immovable properties, namely, flat at Mohan Nagar at Gaziabad, a house with land at Gola Road, Patna and one flat at Gardenia India Limited. He has added two more floors at his house at Gola Road. Illegal funds were transferred from *SMVSSL* for acquisition of the flat at Gardenia in the name of the petitioner's wife. The petitioner's flat booked at Gandenia has already been attached. The petitioner, thus knowingly was involved in possession, acquisition, use and concealment of proceeds of crime, as contemplated under Section 3 of the PMLA. Having regard to the statutory bar to grant of bail under Section 45(1)(ii) of PMLA, the petitioner's prayer for bail should not be allowed by this Court.

11. On consideration of rival submissions, this Court would find that the complaint discloses material collected in the course of investigation and during recording of statement under Section 50(2) and (3) of PMLA regarding huge

transactions between *SMVSSL* and Gardenia builders for purchase of flat in the name of the petitioner's wife. There is acquisition of several properties at Patna, Gaziabad as well as Delhi during the petitioner's posting at the Bank in Bhagalpur.

12. This Court would also find that the petitioner is an accused in several cases, as noted above. The material emerging in the investigation, as per complaint, is yet to be considered at the trial. However, in view of existence of such material, it is not possible for this Court, at the moment, to record existence of reasonable grounds for believing that the petitioner is not guilty. Insofar as the propensity of the petitioner to commit any offence while on bail, this Court would observe that it is trite law that such propensity can be ascertained only with reference to the past conduct, antecedents as well as nature of material emerging in the course of investigation. In view of the petitioner's antecedent and material in the complaint, as noted above, there is no scope for this Court to record a satisfaction that the petitioner is not likely to commit any offence while on bail.

13. In absence of twin test being satisfied, the statutory bar to grant of bail under Section 45(1)(ii) of PMLA comes into play. The statutory bar has been upheld by the Hon'ble 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. The Court, for the present, therefore, is not inclined to allow petitioner's prayer for bail, for the present. The Court's observations, however, shall not be considered by the trial court at the trial.

15. Petitioner's prayer for bail is rejected.

(Madhuresh Prasad, J)

sumit/shashank-

AFR/NAFR	NAFR
CAV DATE	NA
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