IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34716 of 2022

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

==

BIPIN KUMAR, S/o Late Kartik Kumar, Resident of Hanuman Path, Tilkamanjhi, Near State Bank of India, P.S.- Tilkamanjhi, District- Bhagalpur

... ... Petitioner/s

Versus

The Union of India through Directorate of Enforcement New Delhi

... ... Opposite Party/s

==

Appearance :

For the Petitioner/s : Mr. Sanjeev Ranjan, Adv.

For the Opposite Party/s : Dr. K.N. Singh, A.S.G.
Mr. Manoj Kumar Singh, CGC
Mr. Devansh Shankar Singh, JC to ASG
Mr. Sriram Krishna, Adv.
Mr. Ankit Kumar Singh, Adv.

==

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) RC 13(A) of 2017, Special Case No. 2 of 2021 (C.B.I./ACU-V/AC-U/New Delhi), u/s 120B, 34, 409, 467, 468 & 471 of the Indian Penal Code and Section 13(2)r/NV(U)(c) & 13(1)(d) of the Prevention of Corruption Act, 1988.

(ii) Spl. Case No. 14 of 2020 (arising out of RC 17(A)/2017(C.B.I./ACU-V/AC-II/New Delhi)), u/s 120B, 409, 420, 467, 468 & 471 of the Indian Penal Code and Section 13(2)r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

(iii) RC 07(A)/2018, Special Case No. 4 of 2020 (C.B.I./ACU-V/AC-II/New Delhi), u/s 120B, 34, 409, 419, 420, 467, 468 & 471 of the Indian Penal Code and Section 13(2)r/w 13(1)(c) & 13(1)(d) of the Prevention of Corruption Act, 1988.

(iv) RC 15/A/2017, Special Case No. 13(A) of 2020 (C.B.I./ACU-V/AC-U/New Delhi), u/s 120B, 34, 409, 420, 467, 468 & 471 of the Indian Penal Code as well as Section 13(2)r/w 13(1)(c) & 13(1)

(d) of the Prevention of Corruption Act, 1988.

(v) RC 06/A/2018 u/s 120B, 34, 409, 420, 467, 468 & 471 of the Indian Penal Code and Section 45 of the Bihar Co-operative Societies Act.

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. During investigation, it is alleged that material has revealed that the petitioner was a close associate of late Manorma Devi, who was at the centre of the scam, being 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. For

purchase of flat in Gardenia Glamour Phase-II at Gaziabad in the name of petitioner's wife Ruby Kumari, payment of Rs. 33,50,000/- was made from the proceeds of crime. Rs. 30,00,000/- has been paid from the account of *SMVSSL* and some money has been paid by late Manorma Devi through transfer to account by RTGS, as also by way of cash payments. Along with the son of late Manorma Devi, the petitioner has acquired other real estate properties also, for which payment was made from the account of *SMVSSL*. There are altogether 4 shops standing in the name of the petitioner and 3 in the name of his wife Ruby Kumari at GTM Mall, Bhagalpur, all purchased from proceeds of crime with the oblique motive of laundering the money for ensuring its integration in the main stream economy. Other flats have also been found at Majestic Janki at Gola Road in Patna; and 2 flats in an apartment being developed by Anupama Developers at Bhagalpur. There is also acquisition of high end vehicle by funds paid from the account of *SMVSSL* to the account of Brajesh Automobile. The petitioner's claim that it was from a loan by *SMVSSL* is not substantiated by any loan document/agreement. The builder namely Anupama Developers was also paid from the account of *SMVSSL* for 2 flats acquired therein.

6. The properties were alleged to have been acquired

out of the proceeds of crime and was attached by two provisional attachment order nos. 06 of 2020 dated 29/05/2020 and 04 of 2021 dated 30/06/2021.

7. 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.

8. Thereafter, Original Complaint Nos. 1313 of 2020 and 1498 of 2021 were filed before the Adjudicating Authority on 26/06/2020 and 26/07/2021, respectively, for confirmation of the provisional attachment orders in compliance with the principles of natural justice, inherent under Section 8 (1) of the PMLA. The same were subsequently confirmed by the Adjudicating Authority, PMLA. 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.

9. In this case, he is in custody since 28/09/2021. His prayer for bail was rejected by the Special Judge on 09/05/2022. He is, thus, before this Court.

10. It is submitted by learned counsel for the petitioner that it is a case of false implication. The petitioner's wife was a member of the *SMVSSL* and thus financial assistance was obtained for acquisition of some properties from the banking business being carried on by *SMVSSL*. There is no question of any money laundering as the transactions were *bona fide* banking transactions. The petitioner has cooperated in the investigation and his statement was recorded under Section 50 (2) and (3) of the PMLA. There is no flight risk.

11. The learned ASG on the other hand submits that the trail of proceeds of crime, showing the petitioner and his wife as beneficiary of the same is overwhelming, in view of the material collected in the course of investigation. In the complaint filed, there is alleged acquisition of several properties, including vehicle. Petitioner's proximity to late Manorma Devi is also clear and evident from the material in the investigation. There is transfer of huge sums of money from the account of *SMVSSL* for procurement of property and vehicle by the petitioner and his wife. These facts be viewed by this Court keeping in background the statutory bar to grant of bail under Section 45(1)(ii) of the PMLA, so as to disentitle the petitioner for grant of bail. The petitioner also has five antecedents.

12. On consideration of rival submissions, this Court

would find that the complaint contains material in support of allegations levelled against the petitioner, showing trail of proceeds of crime from the *SMVSSL* and late Manorma Devi, for acquisition of property by the petitioner and his wife. This material, however, is subject to proof in accordance with law at the trial. However, for the purposes of lifting the bar under Section 45 of the PMLA to grant of bail, this Court is required to record a satisfaction that there are reasonable grounds for believing that petitioner is not guilty of the offence and grant of bail. In view of the material in the complaint discussed above, this Court cannot record such a satisfaction for the limited purposes of grant of bail.

13. The other aspect required to be satisfied in terms of Section 45 of the PMLA is belief that petitioner is not likely to commit any offence while on bail. 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.

14. The twin test under Section 45 of the PMLA, applicable for grant of bail in terms of decision of 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***, therefore, cannot be satisfied for grant of bail to the petitioner in the instant case, for the present. The Court's above noted observations, however, shall not be considered by the trial court at the trial.

15. Petitioner's prayer for bail is rejected.

(Madhuresh Prasad, J)

shashank/sumit-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.06.2023
Transmission Date	28.06.2023