

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41700 of 2022

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

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AMRENDRA KUMAR YADAV, Son of Late Ayodhya Gope, Resident of
Village - Mishra Tola, Badi Khanjarpur, Bhagalpur, Bihar.

... .. Petitioner/s

Versus

The Union of India through the Director, Directorate of Enforcement, Govt.
of India, New Delhi. Govt. of India.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s :	Mr. Ravindra Kumar, Adv.
For the Opposite Party/s :	Dr. K.N. Singh, ASG
	Mr. Manoj Kumar Singh, CGC
	Mr Amarjeet, Adv.
	Mr. Sriram Krishna, Adv.
	Mr. Prabhat Kumar Singh, 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 3 read with Section 70 and 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. 12 of 2020 (arising out of R/C Case No. 14(A)/2017) under sections 120B, 409, 420, 467, 468 & 471 of the Indian Penal Code and Section 13(1)(d) r/w Section 13(2) of the P.C. Act, in which he is on bail.

(ii) Special Case No. 4 of 2020 (arising out of R/C Case No. 7(A)/2018) under sections 120B, 409, 420, 467, 468 & 471 of the Indian Penal Code and Section 13(1)(d) r/w Section 13(2) of the P.C. Act, in which he is on bail.

(iii) Special Case No. 7 of 2019 (arising out of R/C Case No. 19(A)/2017) under sections 409, 419, 420, 467, 468, 471 & 477A of the Indian Penal Code and Sections 13(1)(c) & 13(1)(d) of the P.C. Act, in which he is on bail.

(iv) Special Case No. 5 of 2019 (arising out of R/C



Case No. 12(A)/2017) under sections 120B, 409, 420, 467, 468 & 471 of the Indian Penal Code and Section 13(1)(d) r/w 13(1)(c) of the P.C. Act, in which he is on bail.

(v) Special Case No. 3 of 2018 (arising out of R/C Case No. 11(A)/2017) under sections 120B, 409, 420, 467, 468 & 471 of the Indian Penal Code and Section 13(1)(d) r/w 13(2) of the P.C. 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. The instant petitioner is alleged to be one of the main accused against whom several FIRs and charge-sheets have been filed. Petitioner was an Assistant Nazir in the Nazarat



Section in office of the District Collector, Bhagalpur. He along with his wife namely Puja Kumari has acquired huge immovable properties valued at crores of rupees. He had put up a proposal to open a new bank account in the name of District Magistrate, Bhagalpur with the Indian Bank at Bhagalpur wherein several crores of rupees were transferred from the account of the District Magistrate maintained with the Oriental Bank of Commerce. More than Rs. 21 crores were thereafter diverted to the account of *SMVSSL*. The cheque was filled up in the handwriting of the instant petitioner. It is also alleged that at least 3 cheques totaling Rs. 5.5 crores were drawn in the year 2016 in favour of *SMVSSL* under the forged signature of District Magistrate, Bhagalpur. The petitioner's proximity with the prime accused late Manorma Devi has also emerged in the investigation. Late Manorma Devi 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. Acquisition of flat in Gardenia Glamour Phase-II in his wife's name, based on payment of Rs. 26,00,000/- from



SMVSSL, has also emerged. The wife of the petitioner, however, hardly had any funds (cash) during the period in which the property was acquired. For the purpose of concealing the proceeds of crime and chanelising the same into mainstream economy, the petitioner has acquired land and a shop at GTM Mall, Bhagalpur, in the name of his wife. The land has been found to be purchased in cash.

6. The properties were alleged to have been acquired out of the proceeds of crime and were attached by a provisional attachment order no. 06 of 2020 dated 29/05/2020.

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. Original Complaint No. 1313 of 2020 was filed before the Adjudicating Authority on 26/06/2020 for confirmation of the provisional attachment order of seized properties 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 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. He is in custody in connection with the instant case since 01/11/2021. His prayer for bail was rejected by the Special Judge on 09/05/2022. He is, thus, before this Court.

10. Learned counsel for the petitioner submits that the petitioner is innocent and has falsely been implicated in this case. The document and witnesses cited in the complaint do not prove the offence against the petitioner. The petitioner has fully explained regarding acquisition of the properties standing in his name *bona fide*. The explanation has been rejected on extraneous consideration. He has denied purchase of the flat at Gardenia Glamour Phase-II at Gaziabad. The interrogation and investigation qua the petitioner is complete as he has already been examined under Section 50 (2) and (3) of the PMLA. There is no flight risk.

11. Learned ASG submits that the petitioner's active role in fraudulent transfer and misappropriation of several crores of public money and deriving pecuniary benefits from the



proceeds of crime is apparent from the material collected in the course of investigation. He has acquired properties hugely disproportionate to his income as a Nazir in the District Collectorate and the evidence is overwhelming with respect to his acquisition, use, possession and concealment of proceeds of crime. The same has been done knowingly, which is evident from the fact that he was instrumental also in transfer of several crores of rupees in a newly opened account in the name of the District Magistrate, Bhagalpur, from which there was diversion of funds to the *SMVSSL*. The material is of such overwhelming proportion that there is no scope for this Court to record a finding that the petitioner is not guilty of the offence, even for the purposes of Section 45 (1)(ii) of the PMLA. The petitioner thus is not entitled to bail and his prayer is fit to be rejected.

12. This Court would consider the petitioner's prayer for bail, keeping in background the legal position in the light 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*, upholding the bar to grant of bail under Section 45 of the PMLA. In terms of the said judgment, for lifting the bar, the accused is required to satisfy the twin test under Section 45(1)(ii) of the PMLA.



13. Insofar as the first test satisfying the court that there are reasonable grounds to conclude that the petitioner is not guilty of the offence, this Court would observe that the petitioner's case would fail on the said test, in view of the overwhelming material noted above, which has been considered in the course of investigation and as contained in the complaint.

14. The evidentiary value and veracity of the material is yet to be considered at the trial. However, for the purposes of consideration in terms of Section 45(1)(ii) of the PMLA, the same is insufficient to record a satisfaction regarding there being reasonable grounds for believing that petitioner is not guilty of the offence.

15. 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.

16. The antecedents of the petitioner and material in



the investigation also are such that the Court cannot record a finding that petitioner is not likely to commit any offence in future, if released on bail. The second test also, therefore, is not satisfied in case of the petitioner’s bail application.

17. 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*.

18. This Court, for the present, therefore, is not inclined to allow petitioner’s prayer for bail. The Court’s observations, however, shall not be considered by the trial court at the trial.

19. Petitioner’s prayer for bail is rejected.

(Madhuresh Prasad, J)

shashank/sumit-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29/06/2023
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