

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.49468 of 2022

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

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PRANAV KUMAR GHOSH, S/o Late Nikhilesh Chandra Ghosh, Resident of
66, Naya Tola, GN Mukherjee Road, Ishak Chak, Bhikhanpur, P.S.- Ishak
Chak, District- Bhagalpur- 812001

... .. Petitioner/s

Versus

1. THE UNION OF INDIA THROUGH THE DIRECTOR, DIRECTORATE
OF ENFORCEMENT, GOVERNMENT OF INDIA, NEW DELH New
Delhi
2. The Director, Directorate of Enforcement Government of India, New Delhi
New Delhi
3. The Assistant Direcotr, Directorate of Enforcement Government of India, 1st
Floor, Chandpura, P Place Bank Road, West Gandhi Maidan, Patna, Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Sumit Kumar Jha, Advocate Ms. Riya Giri, Advocate
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.

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 21-06-2023

1. Heard learned senior 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 another case also:

(i) Special Case No. 12/2020 arising out of R.C. No. 14(A)/2017.

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. As per allegation, during investigation, it has



emerged that the petitioner is one of the main accused. Several Lakhs of rupees have been paid to the petitioner from the account of *SMVSSL* by cheque allegedly as a home loan of Rs. 25,00,000/-. The same, however, was not credited directly to the builder, but in the account of the petitioner and the alleged home loan is not supported by any documentary proof. Petitioner was a close associate of late Manorma Devi who was at the centre of the scam, being Secretary of *SMVSSL* since inception till her death on 13.02.2017. The cheating and fraudulent misappropriation of government funds was being carried on by late Manorma Devi in collusion with several Government Officials, Bank Officials and other individuals which includes the instant petitioner also. The petitioner was engaged in auditing books of account of *SMVSSL* since 2003-2004. From 2007-2008, he also was rendering tax consultancy services to *SMVSSL*. He was thus part of the larger conspiracy in layering of the proceeds of crime of *SMVSSL* and late Manorma Devi. For such services, he was also deriving pecuniary benefits.

6. The proceeds of crime have been invested by petitioner in acquiring property in his own name 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.

7. The property is alleged to have been acquired out of the proceeds of crime and was attached by a provisional attachment order no. 06 of 2020 dated 29/05/2020.

8. 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 Court on 04/10/2021, in which, cognizance has been taken on 04/10/2021 itself.

9. He is in custody since 07/08/2021. His prayer for bail was rejected by the Special Judge on 09/05/2022. He is, thus, before this Court.

10. Learned senior counsel for the petitioner submits that petitioner is innocent and has committed no offence. He was a freelancer rendering auditing and tax consultancy services to the *SMVSSL* as well as late Manorma Devi. There is no link emerging in the investigation supporting allegation of commission of any scheduled offence as per PMLA. Mere transfer of fund from the account of *SMVSSL* to the petitioner's



account, in the above noted circumstance, cannot be the basis of concluding that the petitioner was indulging in money laundering. In fact, the payments were in lieu of the services offered by the petitioner. The transactions referred to by the investigating agency are in fact *bona fide* transactions and not in the least tainted. Petitioner is neither an office bearer of the *SMVSSL* nor a government employee. The petitioner was discharging consultancy services for other organizations apart from *SMVSSL*. The amount of Rs. 25,00,000/- was borrowed by the petitioner by loan application form dated 13.08.2014. On approval of the application, the amount was credited in the petitioner's account, which has also been declared by the petitioner in his income tax returns. The petitioner's relationship with *SMVSSL* and late Manorma Devi is purely professional. He is himself an affluent business professional. Petitioner has been examined under Section 50 (2) and (3) of PMLA. There is no flight risk.

11. It is further submitted that the amount of proceeds of crime received by the petitioner is well below one crore rupees. The petitioner, therefore, is entitled to consideration of his prayer for bail in terms of the proviso to Section 45(1) of the PMLA. Learned senior counsel places reliance on decisions of the Hon'ble Apex Court in the cases of:-



(i) ***P. Chidambaram vs. Directorate of Enforcement***
reported in ***(2020) 13 SCC 791***.

(ii) ***Upendra Rai vs. Directorate of Enforcement***
reported in ***(2019) SCC Online Del 9086***.

(iii) ***Anil Tuteja vs. Director, Directorate of Enforcement*** reported in ***(2020) SCC Online Chh 2527***.

and also on a decision of a coordinate bench of this court in the case of:-

(iv) ***Anil Kumar @ Anil Kumar Singh Vs. Union of India*** reported in ***2022 (3) BLJ 687***.

12. Learned ASG on the other hand submits that petitioner's proximity to late Manorma Devi and his direct participation in layering of the proceeds of crime, in the garb of providing professional consultancy services, is evident from the material in the investigation. He was having regular meetings with late Manorma Devi at her residence and was actually managing the affairs of the *SMVSSL*, routing the proceeds of crime through other individuals. It is submitted that petitioner's prayer for bail has to be considered keeping in background the bar to grant of bail and by applying the twin test under Section 45 of the PMLA, which provision has been upheld by the Hon'ble Apex Court by its decision in the case of ***Vijay Madanlal Choudhary and Others versus Union of India and***



Others reported in **2022 SCC Online SC 929**. Therefore, the citations of cases wherein bail was granted prior to decision of the Hon'ble Apex Court in the case of *Vijay Madanlal Choudhary* (supra), now cannot be relied upon by the learned senior counsel. The investigation has revealed material with details in support of transactions showing transfer of huge funds to the petitioner's account from the account of *SMVSSL*. The petitioner was providing auditing and tax consultancy services to *SMVSSL*. He, therefore, knowingly has acquired, possessed, used and concealed the proceeds of crime for layering it to bring it in the main stream economy. There are antecedents of the petitioner also in one case, as per disclosure made in the instant bail application. The petitioner's prayer for bail, therefore, is fit to be rejected in view of the statutory bar under Section 45 of the PMLA.

13. This Court, after considering the rival submissions, is inclined to accept the submissions of the learned ASG in opposition of the petitioner's prayer for bail. He has placed reliance on material collected till now showing transfer of huge funds to the petitioner's account from the account of *SMVSSL*. The petitioner was also found to be providing auditing and tax consultancy services to *SMVSSL*, which as per learned ASG, has also assisted in concealment of the proceeds of crime. Insofar as



the legal position, this court would observe that after decision of the Hon'ble Apex Court in the case of *Vijay Madanlal Choudhary* (supra), upholding the applicability of the twin test under Section 45 of PMLA, the petitioner's prayer for bail has to be considered by applying the twin test in Section 45 of PMLA. Considering the material relied upon by the learned ASG, this Court does not find reasonable grounds for believing that petitioner is not guilty of the offence or that he is not likely to commit any such offence while on bail.

14. Insofar as the submission of the learned senior counsel regarding the petitioner being alleged beneficiary of an amount less than one crore rupees, this Court would observe that the consideration relevant in the proviso to Section 45 of PMLA being relied upon by the learned senior counsel, is whether on his own or along with other accused, the person claiming bail is implicated in allegations of money laundering a sum of less than one crore rupees. The instant case, which is evident from the records, involves allegations pertaining to money laundering of several crores of rupees by the accused persons. The petitioner, therefore, cannot derive any benefit from the proviso to Section 45 of the PMLA.

15. In view of the material collected in the course of investigation showing transfer of large sums to the petitioner's



accounts by *SMVSSL*, the beneficiary of fraudulent transfer/s and misappropriation of government funds, there is no basis for this Court to record a finding of there being reasonable grounds for believing that petitioner is not guilty of the offence.

16. 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.

17. In absence of twin test being satisfied, the statutory bar to grant of bail under Section 45 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. In view thereof and in view of forgoing discussion/consideration, this Court, for the present, is not inclined to allow the 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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