IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51920 of 2022

Arising Out of PS. Case No.-17 Year-2017 Thana- C.B.I CASE District- Patna

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1. SHRI SHASHI SHEKHAR SON OF LATE PRYABRAT KUMAR VERMA R/O- FLAT NO. 506, MAHARAJA KAMESHWAR RESIDENTIAL COMPLEX, FRAZER ROAD,P.S.- KOTWALI, DISTRICT- PATNA, BIHAR - 800001
2. SMT. ANUPAMA SHEKHAR W/O SHRI SHASHI SHEKHAR R/O FLAT NO. A-28, GREEN ACRESS BUNGLOW SOCIETY, PINJARAPOLE, DINQUARY ROAD, CHEMBUR, MUMBAI- 400088

... ... Petitioner/s

Versus

CENTRAL BUREAU OF INVESTIGATION THROUGH THE DIG OF POLICE, ACB, PATNA BIHAR

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Apurv Harsh, Adv.
		Mr. Prashant Bhardwaj, Adv.
		Ms. Mahima Sharma, Adv.
		Mr. Sujit, Adv.
For the Opposite Party/s	:	Mr. Avanish Kumar Singh, Spl.PP (CBI)
		Mr. Amber Narayan, Adv.
		Mrs. Barkha, Adv.

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

C.A.V. ORDER

9 08-05-2023 Heard learned counsel Mr. Apurv Harsh appearing on behalf of the petitioners and Mr. Avanish Kumar Singh, learned Spl.PP appearing on behalf of the C.B.I.

2. The petitioners apprehend their arrest in connection with C.B.I. R.C Case No.17(A) of 2017, registered for the offence punishable under Sections 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988.

3. The prosecution case, in brief, is that the petitioner no.1 namely, Shashi Shekhar, the then Assistant Director,

Enforcement Directorate, Patna amassed huge movable and immovable properties to the tune of Rs.2,30,42,308/- in his own and family members names which is disproportionate to his known sources of income during the check period of 1991-23.08.2017. It is alleged that his and his wife's (petitioner no.2) total income comes to around Rs.92,61,851/- for the check period but it was revealed that he purchased immovable property in the form of a flat at Mumbai in the name of his wife amounting to Rs.94,45,000/- and he also acquired movable assets in the form of bank balance, fixed deposits, shares, household articles, gold ornaments, promissory notes, etc. amounting to Rs.1,35,97,308/-.

4. Learned counsel for the petitioners submits that the petitioners are quite innocent and have committed no offence. The present F.I.R. is a malicious prosecution based on undisclosed source of information only to harass and falsely implicate the petitioners. He submits that no such incident has ever happened as alleged by the department, and its basis on a previous prosecution based on the similar set of facts arising from C.B.I R.C. Case No.15(A) of 2017, in which the petitioner no.1 has already been granted regular bail by an order of the Hon'ble High Court passed in Cr. Misc. No.62199

of 2017 vide order dated 24.01.2018 and petitioner no.2 was not named in the said F.I.R. He further submitted that the essential ingredients of the offences charged under the Prevention of Corruption Act, 1988 is not met, hence no case is made out against the petitioners. No opportunity has been given to the petitioners to show or explain as to how the properties have been amassed by them, thus falsifying the entire prosecution case. There is no allegation regarding abetment against any of the petitioners in the F.I.R and in the final report, thus no case under section 109 of I.P.C is made out. He further submitted that both the petitioners are fully co-operating with the prosecuting agency and are ready to abide by the conditions. Petitioner No.1 has one criminal antecedent and petitioner no.2 has no criminal antecedent.

5. Learned counsel for the petitioners filed a supplementary affidavit and enclosed the detailed income of the petitioners from agricultural land and additional properties. The agricultural land described in Annexure-A is the ancestral properties of the deponent and the same was obtained by his father in inheritance from his father. The income derived from the aforesaid land from 01.04.1991 to 21.08.2017, the income which was not considered by the department is to the tune of

Rs.2,94,36,305/-. The residential properties, described in Annexure-B, are presently owned by the mother of the deponent and the income derived from the aforesaid residential properties from 01.04.1991 to 21.08.2017 i.e. check period of 27 years, the income which was not considered by the department, is to the tune to of Rs.1,44,38,441/-.

6. Learned counsel for the petitioners relied upon the judgment of **Satyendra Kumar Antil Vs Central Bureau of Investigation and others (2021) 10 SCC 733** in which the Hon'ble Apex Court has held that incase the accused has co-operated in the investigation the trial Courts should not be precluded from granting interim bail and the accused may not be taken into custody.

7. He lastly submits that petitioner no.1 is working as Assistant Director, Enforcement Directorate, Vizag (Andhra Pradesh) and has been time and again co-operating with the prosecuting agency and he has also been appearing before the C.B.I as and when required. He also submits that the chargesheet has been submitted in this case including the relevant documents, list of witnesses, section orders etc.

8. Learned Spl.PP for the C.B.I. opposed the prayer for anticipatory bail and submitted that during the course of

investigation, evidence came on record which *prima facie* corroborates the allegations levelled against the petitioners. It is further submitted that during the course of investigation, it has been established that the petitioner no.1 while working as Assistant Director, Enforcement Directorate, Patna has acquired assets to the tune of Rs.4,19,85,193.91/- by abusing his official position and which is 556.90% disproportionate to his known sources of income.

9. It is submitted by the learned counsel for the C.B.I that the petitioner no.2, a housewife has aided and abetted her husband i.e. petitioner no.1 in acquisition of the asset disproportionate to known sources of income for which they cannot satisfactorily account for. All the documents relied by way of filing of supplementary affidavit has not been placed before the concerned investigating officer.

10. Learned counsel appearing on behalf of the C.B.I. relied upon the judgment/order passed in **Cr.Appeal No.1148 of 2023 [arising out of SLP (Criminal) No.295 of 2023] with Cr. Appeal No.1149 of 2023 [arising out of SLP (Criminal) No.724 of 2023],** in which para-19(x) reliance has been placed on the judgment of the **Apex Court in State Rep. By the CBI v. Anil Sharma** to argue that *"custodial interrogation is*

qualitatively more elicitation-oriented than questioning a suspect who is well ensconded with a favourable order under Section 438 of the Code. In a case like this, effective interrogation of a suspected person is of tremendous advantage in disinterring many useful information and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual."

11. Further reliance has been placed in para-24 of the aforesaid judgment:

"The time-tested principles are that no straitjacket formula can be applied for grant or refusal of anticipatory bail. The judicial discretion of the Court shall be guided by various relevant factors and largely it will depend upon the facts and circumstances of each case. The Court must draw a delicate balance between liberty of an individual as guaranteed under Article 21 of the Constitution and the need for a fair and free investigation, which must be taken to its logical conclusion. Arrest has devastating and irreversible social stigma, humiliation, insult, mental pain and other fearful consequences. Regardless thereto, when the Court, on consideration of material

information gathered by the Investigating Agency, is prima facie satisfied that there is something more than a mere needle of suspicion against the accused, it cannot jeopardise the investigation, more so when the allegations are grave in nature".

12. Again reliance has been placed on para-31 of the aforesaid judgment:

"The nature and gravity of the alleged offence should have been kept in mind by the High Court. Corruption poses a serious threat to out society and must be dealt with iron hands. It not only leads to abysmal loss to the public exchequer but also tramples good governance. The common man stands deprived of the benefits percolating under social welfare schemes and is the worst hit. It is aptly said, "Corruption is a tree whose branches are of an unmeasurable length; they spread everywhere; and the dew that drops from thence, Hath infected some chairs and stools of the authority." Hence the need to be extra conscious."

13. I have heard both the parties at length and from the perusal of records it appears that during the check period of 08.03.1991 to 31.08.2017, the total income of the petitioner no.1 was found to be Rs.75,39,040.12/- but during the investigation it has come out that assets to the tune of Rs.4,19,85,193.91/- was acquired by the petitioner no.1 Shashi Shekhar and his wife petitioner no.2 Anupama Shekhar.

14. Considering the facts and circumstances of the case, I am not inclined to enlarge the petitioner no.1 on bail. The prayer for grant of anticipatory bail on his behalf is hereby rejected.

15. However, as the petitioner no.2 is a lady and aged about 50 years, let the above named petitioner no.2, be released on bail, in the event of her arrest or surrender before the learned Court below within a period of six weeks from today, on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of the learned court below where the case is pending/Successor Court in connection with C.B.I. R.C Case No.17(A) of 2017, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

16. This application is accordingly, partly allowed.

(Anjani Kumar Sharan, J)

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