IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.61186 of 2022
Arising Out of PS. Case No.-4 Year-2018 Thana- GOVERNMENT OFFICIAL COMP. District- Patna

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Smt. Seema Kumari, aged about 50 years, Female Wife of Late Pranay Kumar Resident of Flat No.- 304-A, Ram Shyam Enclave, Road No-2, Nehru Nagar, Near Patliputra Thana, P.S.- Patliputra, District- Patna, At present Pranwati Lane, Barhopora, P.S.- Ishakchak, District- Bhagalpur

... ... Petitioner/s

Versus

The Union of India through the Directorate of Enforcement, Government of India Represented by its Assistant Director, Patna Zonal Office, Patna

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. S.D. Sanjay, Sr. Advocate Mr. Mohit Agarwal, Adv.
For the Opposite Party/s	:	Mr. K. N. Singh, ASG

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
Date : 04-09-2023

Heard Mr. S. D. Sanjay learned senior counsel assisted by Mr. Mohit Agrwal for the petitioner. Mr. K. N. Singh learned Additional Solicitor General has made submissions on behalf of the Union of India.

2. The matter was earlier heard on 1st September, 2023 as a tied up matter and adjourned to today for further consideration.

3. 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').

4. 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 one such case:

(i) Special Case No. 11 of 2020 arising out of C.B.I. Case No. RC06(A)/2018) for the offences under Sections 34, 120(B), 409, 420, 467, 468 and 471 of the Indian Penal Code and Sections 13(2) read with 13(1)(c)(d) of the Prevention of Corruption Act, 1988.

5. 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.

6. The petitioner is widow daughter-in-law of the prime accused late Manorma Devi and as per allegations found to have received pecuniary benefits from the proceeds of crime in the form of booking amount for a flat at Emerlad II/302 at Gardenia Glamour Sector-3, in Ghaziabad, in the name of petitioner's daughter, namely, Aastha Lal. An amount of Rs. 6.97 lakhs was used for the purchase of a car, which was paid by late Manorma Devi. Petitioner has also acquired landed properties and there are withdrawals from the account of '*SMVSSL'*. She was an executive member of '*SMVSSL'* and knowingly involved in concealment, possession, acquisition or use and projecting and claiming the proceeds of crime as tainted property. The alleged receipt of pecuniary benefits by the petitioner emerging during course of investigation in the charge-sheet, runs into crores of Rupees. The said flat was alleged to have been acquired out of the proceeds of crime, and were attached by a provisional attachment order on 29-05-2020.

7. 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. The petitioner was, at that point of time, already in custody in the predicate offence.

8. In this case, she is in custody since 04/02/2022. Her prayer for bail was rejected by the Special Judge on 29/09/2022. She is, thus, before this Court.

9. It is submitted by learned counsel for the petitioner that late Manorma Devi was her mother-in-law. Her husband late Pranay Kumar was a Government servant in the Indian Institute of Natural Resins and Gums at Ranchi, who had got sufficient earning from his salary to lead a reasonably high standard of life with his family. From his life time earnings, the petitioner has acquired some of the real estate which have been included by the Investigating Agency as being derived from ill gotten money. After her husband met with an accident, the petitioner received nearly fifty lacs of Rupees as death claim from TATA AIG, SBI Life Insurance, ICICI Life Insurance and HDFC

Standard Life Insurance Policy. Proof of such payment forms part of the complaint. She was also receiving death-cum-retrial benefits after demise of her husband, in the form of family pension. Petitioner was also receiving some rental income. Therefore, there is no basis to conclude that the earning of the petitioner of nearly about 80 lacs was part of proceeds of crime. In fact, the petitioner has been made an accused by the Investigating Agency under a misconception and only on account of her relationship with late Manorma Devi. Merely because she is a widow daughter-in-law of late Manorma Devi, it cannot be presumed that the petitioner has knowingly assisted or was knowingly a party, actually involved in any process or activity connected with the proceeds of crime, as contemplated under Section 3 of the PMLA. She cannot be presumed to have requisite *mens rea*. It is submitted that these factual assertions are required to be considered favourable to the petitioner in view of the fact that she is a woman accused of offence under the PMLA. Thus, while considering her prayer for bail, rigours of the twin test specified in Section 45(1)(ii) cannot be applied in view of the statutory mandate contained in the proviso to section 45 intended, for a woman accused person.

10. Learned senior counsel to buttress his submission regarding the petitioner being entitled to the benefit of the proviso to Section 45 (1) of the PMLA, since she is a female accused, has referred to judgments of the Delhi High Court in the Case of ***Preeti Chandra vs. Directorate of Enforcement*** reported in ***2023 SCC Online Del 3622*** and another decision of the Delhi High Court in the case of ***Sameer Mahandru vs. Directorate of Enforcement*** in ***CRL. M.A. 10859/2023 in Bail APPLN. 1343/2023***, wherein the Court has granted interim bail to the petitioner on medical grounds, extending the benefit of the proviso to Section 45 (1) of the PMLA, intended for “infirm” accused persons.

11. He has also referred to decision of the Delhi High Court in the case of ***Kewal Krishan Kumar vs. Directorate of Enforcement*** reported in ***2023 SCC OnLine Del 1547***, wherein considering the petitioner to be falling in the exception clause under the proviso to Section 45 (1) of the PMLA, on account of being infirm has proceeded to consider the petitioner’s prayer for bail, by applying triple test under Section 437(i) of the Cr.P.C., instead of twin test applicable under Section 45 (1) of the PMLA.

12. He has also relied upon decision of the Delhi High Court in the case of ***Devki Nandan Garg vs. Directorate of***

Enforcement, in Bail Application No. 540/2022, CRL. M. As. 2909/2022, 3655/2022, again considering the exception carved out by the legislature in the proviso to Section 45(1) of the PMLA, when any person/accused is under the age of 16 or is women or a sick or infirm.

13. Some recent orders of the Hon'ble Apex Court have also been referred to, specifically the case of ***Pawan Kumar Jain vs. Union of India*** and ***Roop Singh Yadav vs. Directorate of Enforcement***, whereby and whereunder, he submits that the Apex Court has granted anticipatory bail to accused under PMLA. Some other decisions, granting bail to other accused persons under PMLA have also been referred to by different High Courts, but the said decisions are prior to decision of the Apex Court in the Case of ***Vijay Madanlal Choudhary vs. Union of India***, reported in ***2022 SCC OnLine SC 929*** wherein the rigours and applicability of the twin test was held mandatory in the matter of consideration of bail to accused under PMLA. This Court, therefore would refrain from considering the other decisions of the different High Courts, granting bail to accused persons, prior to decision of the Apex Court in the case of ***Vijay Madanlal Choudhary*** (***supra***). He also places reliance on order dated 24-04-2023, passed by a Co-ordinate Bench of this Court, granting bail to female accused, namely, ***Indu Gupta vs. Union of India & Anr.*** in ***Cr. Misc. No. 69939 of 2022***.

14. From the counter affidavit and charge-sheet, it is evident that the petitioner's statement has been recorded under Section 50(2)(3) of the PMLA. The property allegedly acquired through proceeds of crime has also been possessed by the authorities. There is nothing on record to suggest that the petitioner is a serious flight risk.

15. Learned Additional Solicitor General has opposed the prayer for bail. It is submitted that late Manorma Devi, the prime accused has transferred huge amounts for acquisition of property in favour of the petitioner and her daughter. Cash deposits, more than 50 lakhs in the account of the petitioner is derived from the proceeds of crime arising out of bank accounts of *'SMVSSL'*. The same has been done for laundering the proceeds of crime. For acquisition of vehicle also late Manorma Devi has paid the money. Being well aware of the day-to-day activities of late Manorma Devi, the petitioner has concealed, possessed, acquired and used the proceeds of crime derived from late Manorma Devi for acquisition of property and deposit in her bank account for her own benefit and for benefit of her daughter, namely, Astha Lal. In view of such material emerging in the course of investigation showing transfer and withdrawal of huge funds from the account of *'SMVSSL'* which found their way into the petitioner's accounts and for acquisition of property in her name, the petitioner cannot deny her direct, as well as indirect participation in the offence committed under Section of 3 of the PMLA.

16. Learned ASG, has also referred to analysis of the petitioner's statement recorded under Section 50 (2) & (3) of the PMLA on 10-07-2019 and 05-03-2020. Referring to the same, it is submitted that the petitioner has stated that she has received land of five (5) *kathas* as a gift from her mother-in-law, late Manorma Devi. However, there is no gift deed executed in her name. The other details emerging from the recorded statement of the petitioner, reveal details of benefits received by the petitioner from late Manorma Devi. It also reveals details of transfer of funds for purchase of flat and cash deposits by late Manorma Devi in petitioner's account to the tune of Rs. 3,00,000/- lakhs. She has also stated that late Manorma Devi was operating the bank account, which was maintained in the petitioner's name. The petitioner, merely, signed the cheques, as per instruction of her mother-in-law. Huge funds have been withdrawn from cash account of '*SMVSSL*', to the tune of Rs.

51,14,000/- (Fifty-one lakhs fourteen thousand rupees). The details of analysis of petitioner's statement recorded is to be found in the complaint at paragraph no. 7.2. The same reveals laundering of illegal money through the petitioner's bank account by acquiring property for the petitioner and her daughter.

17. The plea raised by the learned senior counsel for the petitioner regarding the petitioner being a women accused for availing benefits of the 1st proviso is required to be seen, keeping in background this overwhelming material that has emerged during the course of investigation and as per petitioner's own statement recorded under Section 50(2) & (3) of the PMLA.

18. Learned ASG, has thereafter referred to decisions of the Bombay High Court in the case of ***Anil Vasantrao Deshmukh vs. State of Maharashtra*** reported in ***2022 SCC OnLine Bom 3150.*** He submits that while dealing with the proviso to Section 45 of the PMLA, the Bombay High Court, in the said judgment has observed that if based on personal attributes, an accused can be released on bail relying on the proviso, regardless of the nature of accusations and material on record, the main part of Section 45 would be rendered nugatory.

This legal position stands affirmed in view of dismissal of SLP (Criminal) No. 32078 of 2022 filed against the said decision, on 11.10.2022 by the Hon'ble Apex Court.

19. This Court should not grant the petitioner the privilege of bail; since the twin tests based on the rigors under Section 45(1) of the PMLA, have not been satisfied.

20. Having heard the rival parties, this Court is required to consider applicability of the bar and twin test as contemplated under Section 45 (1) of the PMLA in case of the instant petitioner who is a woman accused. As per Section 45 of the PMLA a person accused of an offence under the PMLA is not to be released on bail or his own bond. Only if the Court, after giving opportunity to the Public Prosecutor to oppose the application for such release, is satisfied that there are reasonable grounds for believing that he is not guilty of such offence; and not likely to commit any offence while on bail, bail can be granted to the accused person of an offence under the PMLA.

21. In so far as the instant case is concerned, the petitioner accused is a widowed woman aged about 50 years old. Therefore to consider whether the petitioner is entitled to be released on bail without applying the twin test, or not, the Court would first take note of the proviso to Section 45(1) (2) of the PMLA, which reads:-

> "*Provided that a person, who is under the age of sixteen years or is a woman or is sick or infirm, [or is accused either on his own or along with other co-accused of money-laundering of a sum less than one crore rupees] may be released on bail, if the Special Court so directs:*"

22. The Court accordingly has to consider as to what approach is required while considering a prayer for grant of bail to an accused who is covered by proviso to Section 45 of the PMLA. While according such consideration, this court is bound by decision of the Hon'ble Apex Court in the case of ***Directorate of Enforcement versus Preeti Chandra***, having *neutral citation No.* ***SLPR 7409/2023***, also reported in ***2023 SCC Online SC 930***. The Hon'ble Apex Court by the said decision has denied to interfere with the order passed by the Delhi High Court granting bail to woman accused by applying the triple test, as contemplated under Section 437 Cr.P.C. The Delhi High Court had held the twin condition of Section 45 of PMLA not to be applicable to the applicant (woman accused). Such grant of bail came up for consideration before the Hon'ble Apex Court in the case of ***Directorate of Enforcement versus Preeti Chandra*** (*supra*). Relevant extract of the order of the Hon'ble Apex Court reads as follows:-

> *“…...**2.** The proviso to Section 45 of the Prevention of Money Laundering Act, 2002 confers a discretion on the Court to grant bail where the accused is a woman. Similar provisions of Section 437 of the Code of Criminal Procedure 1973 have been interpreted by this Court to mean that the statutory provision does not mean that person specified in the first proviso to sub-section (1) of Section 437 should necessarily be released on bail. [see Prahlad Singh Bhati v. NCT, Delhi, (2001) 4 SCC 280].*
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> ***3.** Considerations which weigh in the grant of bail are distinct from those which are relevant to the adjudication of an application for cancellation of bail. The respondent has undergone over 620 days of custody. Since in the exercise of its discretion, the High Court has come to the conclusion that the respondent should be released on bail, we are not interfering with the order under Article 136 of the Constitution.....”*

23. From the decision of the Hon’ble Apex Court (*supra*) it is apparent that the proviso to Section 45 of PMLA confers discretion on the court to grant bail where the accused is woman, similar to the proviso to Sub-section 1 of Section 437 Cr.P.C., as per decision of the Hon’ble Apex Court in the case of ***Prahlad Singh Bhati vs. NCT, Delhi*** reported in ***(2001) 4 SCC***

280. The court, therefore, has to consider the petitioner's prayer for bail in terms of the decision of the Hon'ble Apex Court in the case of ***Prahlad Singh Bhati*** (*supra*).

24. It is an admitted position that the petitioner is daughter-in-law of late Manorma Devi, who is stated to be prime accused being at the centre of the crime. On account of petitioner's status as a widow, it is only obvious that her mother-in-law would be extending financial support to sustain a quality life. Some letters issued by the various insurance companies, as claimed by the petitioner, has also been enclosed with the complaint. The death-cum-retrial benefits of her husband would also be required to be taken into consideration, apart from receipt of funds alleged to be proceeds of crime. The petitioner has denied that she knowingly is a party or is actually involved in any process or activity in commission of offence/s under Section 3 of the PMLA. On consideration of submissions advanced on behalf of the petitioner, taken note of above, her statements recorded under Section 50 and material on record, this court is of the opinion that she has provided a *prima facie* explanation for receipt of the funds, for the limited purposes of consideration for bail. Whether such explanation would lead to petitioner's acquittal; or be found at the trial to be wholly unreliable as petitioner's defence, is an issue which remains to be determined at the trial. *Mens rea* also is yet to be established at the trial.

25. Thus, the totality of circumstances including the petitioner's custody of more than 19 months in the present case are being considered by the Court, for the purposes of bail.

26. The petitioner has only one antecedent, that also in the predicate offence out of which, the present case arises. She is a widow, having substantial roots in the society, contributing to the growth and development of her daughter.

27. Petitioner was examined under Section 50 on two dates. She is already on bail in the predicate offence. She undertakes before this Court to participate in the investigation as and when required.

28. There is also no material brought on record by the respondents to show that there is any likelihood of the petitioner tampering with evidences or influencing any witnesses.

29. This Court would thus allow the petitioner's prayer for bail. The above consideration is for the limited purposes of grant of bail and may not be deemed as an expression of any opinion by this Court on the merits of the matter which is yet to be determined at the trial or for any other purposes.

30. Let the petitioner, above named, be released on bail on furnishing bail bond of Rs. 50,000/- (Fifty thousand) with two sureties of the like amount each to the satisfaction of the learned Sessions Judge/Special Judge (PMLA), Patna, in connection with Special Trial No. (PMLA) 05 of 2021 arising out of ECIR No. PTZO/04/2018, dated 24.05.2018, subject to the following conditions:-

> *(i) That one of the bailors will be a close relative of the petitioner who will give an affidavit giving genealogy regarding relationship with the petitioner.*
>
> *(ii) That the petitioner will appear/ be well represented before the Court on each date and if she fails to do so on two consecutive dates, her bail bond will be liable to be cancelled.*
>
> *(iii) The petitioner shall not leave the country without permission of the Trial Court.*
>
> *(iv) The petitioner shall join the investigation as and when called by the I.O. concerned;*
>
> *(v) The petitioner shall provide her mobile number to the Investigating Officer (IO) concerned at the time of release, which shall be kept in working condition at all times. The petitioner shall*

not switch off, or change the same without prior intimation to the IO concerned, during the period of bail;

(vi) In case, she changes her address, she will inform the IO concerned;

(vii) The petitioner shall not indulge in any criminal activity during the bail period;

(viii) The petitioner shall not communicate with or intimidate or influence any of the prosecution witness or tamper with the evidence of the case.

31. This Court would expect that the petitioner's counsel would honour his undertaking in the instant proceedings regarding supply of the requisite court fee etc., within two weeks from the date he is called upon to do so by the office.

(Madhuresh Prasad, J)

Shyambihari/
Shashank-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05-09-2023
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