IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.15453 of 2024

Arising Out of PS. Case No.-1 Year-2018 Thana- E.C.I.R (GOVERNMENT OFFICIAL) District- Patna

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Chandeshwari Devi W/O Late Musafir Sahni R/O Village- Kajipur,P.O.-Thathan Bujurg, Ps.- Hajipur Sadar, Dist.- Vaishali, Pin-844125.

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Directorate Of Enforcement, Govt. Of India Represented By Assistant Director/Pmla. Ist Floor, Chandpura Place, Bank Road West Gandhi Maidan, Patna-800001.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Vasant Vikas, Advocate
For the State	:	Mr. Yogendra Kumar, A.P.P.
For the ED	:	Mr. Anshay Bahadur Mathur, CGC

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL ORDER

3 03-05-2024 Heard the parties.

2. The petitioner has preferred this application for grant of anticipatory bail in connection with Special Trial (PMLA) Case No. 02/2020, ECIR No.PTZO/01/2018 dated 07.02.2018 for offence punishable under Section 4 of the Prevention of Money Laundering Act.

3. The prosecution case in brief is that the complainant in view of Notification No. S.O. 372 (1) dated 05.02.2016 and Govt. of India Notification No. 6/14/2008-ES dated 11th Nov. 2014 issued by the Central Government forwarded a list of 10 FIRs/Chargesheets registered against 1.

Musafir Sahni @ Alok Jee @ Anand@ Manik Jee and 05 FIRs/ Chargesheets, registered against 2. Anil Ram @ Sumit Jee@ Nirbhay Jee@ Ramu Ram, a naxal associate of Musafir Sahni and both are habitual offenders in heinous offences like criminal conspiracy, murder, attempt to murder, robbery and dacoity offences under UAPA offence under Arms Act etc. since long in the areas of Vaishali, East Champaran as well as Muzaffarpur and the said offences allegedly committed by Musafir Sahni and Anil Ram are covered as Schedule Offence, details of which are given in page no. 4, 5 & 6 of complaint petition. It is alleged that accused Rajendra Ram, is uncle of main accused Anil Ram, who is an active member (Commander of Muzaffarpur-Vaishali sub Zonal Committee) of banned outfit CPI (Maoist) who has acquired immovable properties in the name of the petitioner and his family members out of proceeds of crime generated through collection of levy, extortion etc., since long on the strength of his criminal activities and background. So, proceeds of crime generated through naxal activities have been utilized for acquisition of assets in the name of others including the petitioner so that property acquired out of such proceeds of crime cannot be projected as untainted.

4. Learned counsel for the petitioner submits that

petitioner is quite innocent and has been falsely implicated in this case due to suspicion as she is wife of co-accused Late Musafir Shani who happened to be an active member of banned outfit CPI (Maoist). Petitioner is Anganbadi Sevika and is an old lady, totally unaware of the fact that her husband was involved in any crime. The only material that has come against this petitioner is that certain lands were purchased in her name which were purchased by her husband and there is no evidence that petitioner had any knowledge of the said fact. He further submits that the allegation of purchase of immovable property by the petitioner from illegitimate sources of income is of civil nature and no crime has been done by the petitioner. Petitioner claims clean antecedent.

5. However, learned counsel for the Directorate of Enforcement submits that during investigation, it has revealed that petitioner was knowingly involved in acquisition, concealment, transfer of proceeds of crime and was knowingly involved in process or activity connected with proceeds of crime and projection of the same as untainted. She has committed the offence of money laundering, as defined under Section 3 of the PMLA and punishable under Section 4 of the PMLA. He further submits that the petitioner has acquired 11 plots and movable

properties, worth Rs. 16,67,609/- in cash. However, she does not file ITR and has meagre income somehow sufficient to meet her livelihood expenses. Moreover, during her statement under Section 50(3) of the PMLA, she could not explain the source of this huge cash and thus, failed to discharge the burden of proof cast upon her under Section 24 of the PMLA. She was in regular touch with her husband. In view of the criminal activities of her husband, who admitted his involvement in illegal activities of CP1 (Maoist), and not having such income for huge investments in properties, it is apparent that proceeds of crime acquired by Musafir Sahni have been concealed and transferred for acquisition of these properties in an attempt to project the same as untainted and to frustrate the proceedings under PMLA. He next submits that frequent cash deposits were made in the bank accounts of this petitioner, the source of which was never disclosed by her during the investigation. Further, the cash deposits are far in excess of income, which is nothing but proceed of crime. This makes it evident that proceeds of crime generated by Musafir Sahni have been knowingly concealed by this petitioner in her bank accounts in an attempt to project the tainted properties as untainted.

6. Having heard learned counsel for the parties and

taking into consideration the facts and circumstances of the case and also the fact that petitioner is knowingly involved in acquisition, concealment and transfer of proceeds of crime and projection of the same as untainted, as referred to hereinabove. Further, Section 45(1)(ii) of the P.M.L.Act provides that notwithstanding anything contained in the Cr.P.C., no person accused of an offence under the P.M.L.Act shall be released on bail unless the Court is satisfied that there are reasonable grounds for believing that he/she is not guilty of such offence and that he/she is not likely to commit any offence while on bail. The Bombay High Court in its order dated 28.1.2022 passed in **Cr. Application (BA) No. 1149 of 2019** ***(Ajay Kumar vs. Directorate of Enforcement, Nagpur)*** held as follows:

> *"49. We may reiterate that the reference arose out of statutory jurisdiction and not constitutional jurisdiction of this Court. Unless there is proper challenge and pleadings, the issue of constitutional validity cannot be undertaken. Undoubtedly, the Legislature has power and competence to amend the provisions of the Act. Unless the amended provision is struck down by the Courts, it cannot be watered down. Since after the amendment the entire complexion of section 45 has been changed, we are not in agreement with the contention that the entire section has to be reenacted by way of amendment after decision in the case of Nikesh Shah*

(Supra). Therefore, in our opinion, the twin conditions would revive and operate by virtue of Amendment Act, which is on date in force. In view of that, we answer the reference by stating that the twin conditions in section 45(1) of the 2002 Act, which was declared unconstitutional by the judgment of the Apex Court in Nikesh T.Shah vs. Union of India (2018) 11 SCC 1, stand revived in view of the Legislative intervention vide Amendment Act 13 of 2018."

7. Further, the Hon'ble Supreme Court in its order dated 4.1.2022 passed in **Cr. Appeal no. 21 of 2022** ***(The Assistant Director, Enforcement Directorate vs. Dr. V.C. Mohan)*** held as follows :

"Mr. Dama Seshadri Naidu, learned senior counsel appearing for the respondent invited our attention to the dictum in paragraph 42 of the judgment in Nikesh Tarachand Shah vs. Union of India & Anr. reported in (2018) 11 SCC 1. The observations made therein have been misunderstood by the respondent. It is one thing to say that Section 45 of the PMLA Act to offences under the ordinary law would not get attracted but once the prayer for anticipatory bail is made in connection with offence under the PMLA Act, the underlying principles and rigors of Section 45 of the PMLA Act must get triggered although the application is under Section 438 of Code of Criminal Procedure. As aforesaid, the High Court has not touched upon this aspect at all. It is urged before us by the respondent that this objection was never taken before the High Court as it is not

reflected from the impugned judgment. It is not a question of taking objection but the duty of court to examine the jurisdictional facts including the mandate of Section 45 of the PMLA Act, which must be kept in mind. Accordingly, we deem it appropriate to set aside the impugned judgment and order and relegate the parties before the High Court for reconsideration of Criminal Petition No. 4134 of 2021 afresh for grant of anticipatory bail filed under Section 438 of the Code of Criminal Procedure in connection with stated PMLA offence."

8. Taking into consideration the rival submissions of learned counsel for the parties and materials available on record as also in view of Section 45 of the P.M.L. Act, this Court does not find any ground to grant anticipatory bail to the petitioner and as such, the application for grant of anticipatory bail to the petitioner is rejected.

(Prabhat Kumar Singh, J)

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