IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23742 of 2024

Arising Out of PS. Case No.-4 Year-2018 Thana- E.C.I.R (GOVERNMENT OFFICIAL)
District- Patna

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PRANAV KUMAR GHOSH @ P.K. GHOSH S/O LATE NIKHILESH CHANDRA GHOSH Resident of 66, Naya Tola, Gyanendra Nath Mukherjee Road, Ishakchak, Bhikhanpura, P.S.-Ishakchak, District- Bhagalpur.

... ... Petitioner/s

Versus

THE ENFORCEMENT DIRECTORATE THROUGH ITS DIRECTOR BIHAR

... ... Opposite Party/s

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with

CRIMINAL MISCELLANEOUS No. 31849 of 2024

Arising Out of PS. Case No.-4 Year-2018 Thana- E.C.I.R (GOVERNMENT OFFICIAL)
District- Patna

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BIPIN KUMAR SON OF LATE KARTIK KUMAR RESIDENT OF HANUMAN PATH, TILKAMANJHI, NEAR STATE BANK OF INDIA, P.S. - TILKAMANJHI, DISTRICT - BHAGALPUR

... ... Petitioner/s

Versus

THE UNION OF INDIA THROUGH THE ASSISTANT DIRECTOR, PATNA ZONAL OFFICE, ENFORCEMENT DIRECTORATE BANK ROAD, PATNA

... ... Opposite Party/s

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with

CRIMINAL MISCELLANEOUS No. 41876 of 2024

Arising Out of PS. Case No.-4 Year-2018 Thana- E.C.I.R (GOVERNMENT OFFICIAL)
District- Patna

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RAJNI PRIYA SON OF LATE AMIT KUMAR RESIDENT OF AWADHESH MANSION, PRANWATI LANE, TILKA MANJHI, POLICE STATION - TILKA MANJHI, DISTRICT - BHAGALPUR, BIHAR, PIN - 812001

... ... Petitioner/s

Versus

THE STATE THROUGH ASSISTANT DIRECTOR, DIRECTORATE OF ENFORCEMENT, PATNA ZONAL OFFICE, PATNA BIHAR

... ... Opposite Party/s

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Appearance :

(In CRIMINAL MISCELLANEOUS No. 23742 of 2024)
For the Petitioner/s : Ms.Priyanka Singh
For the Opposite Party/s : Dr. Krishna Nandan Singh (A.S.G)
Mr. Manoj Kumar Singh Spl PP (ED)
Mr Ankit Kumar Singh
Mr. Shivaditya Dhari Sinha, AC to ASG

(In CRIMINAL MISCELLANEOUS No. 31849 of 2024)
For the Petitioner/s : Mr.Vishal Kumar
For the Opposite Party/s : Dr Krishna Nandan Singh (ASG)
Mr. Tuhin Shankar
(In CRIMINAL MISCELLANEOUS No. 41876 of 2024)
For the Petitioner/s : Mr.Ajit Kumar
For the Opposite Party/s : Dr Krishna Nandan Singh (ASG)
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CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

CAV ORDER

14 07-10-2024 I have already heard the learned counsels for the petitioners and learned counsel for the Enforcement Directorate.

2. These are applications for regular bail on behalf of the petitioners for the offences alleged under Sections 120B, 409, 420, 467, 468 and 471 of the Indian Penal Code and Sections 13(2)/13(1)(d) of the Prevention of Corruption Act in connection with Special Case No.12 of 2020, arising out of R.C.14/A/2017 (ECIR No. PTZ0)/04/2018).

3. These cases relate to the infamous case known 'as Srijan Scam', in which thousands of crores of government money were siphoned off from the government accounts and deposited in the account of the Srijan Mahila Vikas Sahyog Samiti Ltd. (for short 'the SMVSSL') in collusion with the officials of the State Government, officials of the Bank and the fund transferred into the account of 'the SMVSSL' was again

illegally transferred into different accounts for personal gains.

4. The prayer for bail of the petitioner Pranav Kumar Ghosha @ P.K.Ghosh was rejected by a detailed order of the co-ordinate Bench of this Court dated 21.06.2023 passed in Cr.Misc.No. 49468 of 2022. Thereafter, the Hon'ble Supreme Court also dismissed the special leave petition (Crl) No. 32705 of 2023, vide order dated 27.09.2023.

5. Similarly, the application for bail of the petitioner Bipin Kumar was rejected by a co-ordinate Bench of this Court, vide a detailed and exhaustive order dated 21.06.2023 passed in Cr. Misc. No. 34716 of 2022. Thereafter, the Hon'ble Supreme Court too dismissed the Special Leave to Appeal (Crl.) No.9472 of 2023, vide order dated 18.08.2023.

6. The factual matrix while rejecting the bail applications of the petitioners was dealt with in the order of rejection by the co-ordinate Bench of this Court, so the facts need not be reiterated.

7. The learned counsel for the petitioners submitted that they are renewing their prayer for bail on two grounds: (i) delay in trial and (ii) they have suffered incarceration for a period more than one-third of the maximum punishment, as prescribed under Section 4 of Prevention of Money Laundering

Act, 2002 (for short 'the PMLA'). It has been submitted that the Hon'ble Supreme Court in the case of 'In Re-INHUMAN CONDITIONS IN 1832 PRISONS (Writ Petition (Civil) No. 406/2013)' has directed the Jail Superintends for immediate implementation of Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'the Sanhita'). The Hon'ble Supreme Court directed the Superintendent of Jails across the country to process the applications of under-trial prisoners. It has also been submitted that from bare perusal of said order, it appears that the provision of Section 479 of 'the Sanhita' is more beneficial than that of Section 436A of the CrPC, since only one-third of the maximum punishment suffered by an accused as under-trial prisoner has been taken into account for his release in comparison to one-half of the sentence provided in the CrPC. As such, the petitioners suffered more than one-third of the maximum punishment of ten years provided in Section 4 of 'the PMLA'), hence, they should be granted bail. He submitted further that the petitioner Bipin Kumar is in custody since 28.09.2021 and the petitioner Pranav Kumar Ghosh is in custody since 06.08.2020.

8. Even it is assumed to be true that the intent of the Hon'ble Supreme Court is to provide the benefit of Section 479

of ‘the Sanhita’ to those under-trial prisoners whose case was brought before coming into force of this ‘Sanhita’, even then second proviso to Section 479 of ‘the Sanhita’ provides a discretion to the Court to continue the detention of such person for a longer period than one-half of the said period by recording reasons in writing and after giving opportunity of hearing to the public prosecutor. This proviso shows that merely because a person has suffered one-half or one-third, as the case may be of the maximum enacted punishment, he cannot claim his release as a matter of right. It is the discretion of the Court that if there are reasons for continuation of his incarceration for more than one-half, the Court can reject the bail application. The reason for rejection of the bail application has already been discussed in the above-noted rejection orders of the co-ordinate Bench of this Court. The Hon’ble Supreme Court has also dismissed the special leave petition.

9. The money laundering offence, which creates a serious threat to the national economy and national interest adversely affects the economic interests of the society. The economic offences having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed seriously. I am of the considered view that, in such cases, the

petitioners should not be given the benefit of Section 479 of 'the Sanhita' or Section 436A of the CrPC.

10. So far as the second ground is concerned, the learned counsels for the petitioners by referring the decisions rendered by the Hon'ble Supreme Court in the case of '***IN RE-INHUMAN CONDITIONS IN 1382 PRISONS (Writ Petition (Civil) No. 406/2013, Modh Enamul Haque Vs. Directorate of Enforcement (SLP (CRL.) No. 11129/2024) and Benoy Babu Vs. Enforcement Directorate (SLP (Crl.) No. 11644-11645 of 2023),*** have submitted that the prolonged period of incarceration of the petitioners should be considered and they should be granted bail, whereas the learned counsel for the Enforcement Directorate, by referring a decision of Hon'ble the Supreme Court in ***Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & Anr. (2005 (2) SCC page 42,*** has submitted that the bail application can only be filed when there is a change in the factual situation. In the present case, there is no change at all in the situation, as such, the second bail application filed by the petitioners, cannot be considered. In the case of **State of Maharashtra Vs. Captain Buddikota Subha Rao (1990 SCC (Cri) 126)**, the Hon'ble Supreme Court has held that the change circumstance should be substantial in nature.

11. Considering the above facts and circumstances, I am not inclined to grant bail to the petitioners. Accordingly, their prayer for bail is rejected.

Cr.Misc.No. 41876 of 2024

12. So far as the petitioner Rajni Priya (Cr.Misc.No.41876 of 2024) is concerned, it is her first attempt for grant of bail. She is daughter-in-law of the kingpin of the scam late Manorama Devi. After the death of Manorama Devi in February, 2017, she became her successor and continued till August, 2017 till lodging of the FIR.

13. As per allegation, the office-bearers of 'the SMVSSL') in conspiracy with the officers/officer bearers of the Indian Bank, Bank of Baroda and with the officials of the State Government and others illegally transferred and misused huge public fund from the bank accounts of the State Government in fraudulent manner for personal gains. The petitioner and other co-accused persons acquired huge proceeds of crime by commission of offence punishable under Sections 420/437/471/120B of the Indian Penal Code, Section 13 of the Prevention of Corruption Act as well as Section 4 of 'the PMLA'.

14. The learned counsel for the petitioner has

submitted that she is an innocent lady. It is true that late Manorama Devi was her mother-in-law and she succeeded her after her death, but she is innocent and was not aware of the affair of 'the SMVSSL'). Her marriage was solemnized with the son of Manorama Devi in the year 2010 and she was not aware that the immovable properties acquired by her are the proceeds of crimes. It has been submitted that she is a housewife and she never went to the registry office for registration of immovable properties in her name. As per the submission, Manorama Devi expired on 13.02.2017 and the petitioner took over as Secretary of ' the SMVSSL') through special proceeding convened by the district officials. It has been submitted that the district officials took her signatures in haste on so many papers and she without understanding the repercussion, signed those papers and cheques.

15. On the other hand, the learned counsel for the Enforcement Directorate opposed the prayer for bail by submitting that the petitioner by utilizing the proceeds of crime, acquired the immovable properties which are detailed as under:-

> "(a) Khata No. 339, Khesra No. 254, Mauja & Thana Sabour, Thana No. 26, SR & District-Bhagalpur (Area=25 Decimal) worth Rs. 2,12,000/-.

(b)Khata No. 204, Khesra No. 2608, Rakba 355 Sq Feet at Mohalla Barahpur, Thana Eshakchak, Anchal Jagdishpur, RO & District Bhagalpur, ward 25(old), 23 (new) (Area= 355 Sq Feet) worth Rs.1,45,000/-.

(c) Khata No. 421, Khesra No. 2596, Rakba 1620 Sq Feet at Mohalla Barahpur, Thana Eshakchak, Anchal Jagdishpur, RO & District - Bhagalpur, Ward No. -10/25 ward 33(new), Holding No. 124A, Jamabandi No.4316 (Area 1620 Sq Feet) worth Rs.9,60,000/-.

(d) Khata No. 409, Khesra No. 655, Rakba 1240 Sq Feet Mauja Fatehpur, Thana Sabour, SR & District Bhagalpur, Thana No. 23, Halka No. 1, Jamabandi No. 414 (Area =1240 Sq Feet) worth Rs. 16,00,000/-.

(e) Flat No. 307, 3rd Floor, Krishna Dham Apartments, At- Off Central Jail Road, Tilkamanjhi, Bhagalpur Holding No. 332, 337 & 338, Ward No. 31(New), Khata No. 573 & 835, Khesra No. 801 Ka, Kha, 802 ka, kha and 802/1461 ka, kha worth Rs. 26,00,000/-.

(f) Khata No. 236, Khesra No. 752, Rakba 1685 Sq Feet Mauja Fatehpur, Thana No. 23, Halka No. 1 Thana & Anchal Sarbour, RO & District Bhagalpur (Area = 1685 Sq Feet) worth Rs. 7,76,000/-.

(g) Khata No. 236, Khesra No. 752, Rakba 1685 Sq Feet Mauja Fatehpur, Thana No. 23, Halka No. 1 Thana & Anchal Sarbour, RO &

District Bhagalpur (Area = 1685 Sq Feet) worth Rs. 18,82.000/-.

(h) Flat No. R-2/102 Gardenia Glamour Phase II Project, Ghaziabad worth Rs. 27,52,512/-.

(i) Deed No. 2110 dated 04.03.2015, land and structure situated at Circle Bhagalpur, Thana-Beriyal Ground Road & Barahpura Road, Khata no. 1818, Plot no. 2600 in the name of Rajni Priya, and her son Maulik worth Rs 70,41,895/-.

(j) at S5 – 003, Eldeco Amantaran, Sector- 119, Noida, UP worth Rs. 97,48.208/- in the name of Amit Kumar and the petitioner."

16. The learned counsel for the Enforcement Directorate has submitted further that there is a presumption that the property is proceeds of crime unless the contrary is proved by the accused. The petitioner failed to explain the source of these properties, so the presumption under Section 24 of 'the MPLA' could not be rebutted by the petitioner. The learned counsel has also submitted that the petitioner is not entitled for benefit of the first proviso to Section 45(1) (ii) of 'the PMLA', since the money involved in the scam is more than thousands of crores of rupees, whereas the first proviso to Section 45(1) (ii) of 'the PMLA' gives special relaxation to the accused who is

below the age of 16 years or is a woman, or is sick or inform, but condition is that the money involved should be less than one crore rupees.

17. Considering the facts and circumstances, and keeping in view the magnitude of allegation, the petitioner does not deserve the privilege of bail, which is hereby rejected.

(Nawneet Kumar Pandey, J)

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