IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25805 of 2024

Arising Out of PS. Case No.-6 Year-2021 Thana- E.C.I.R (GOVERNMENT OFFICIAL) District- Patna

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Saurav Kumar @ Sourav Kumar Son of Late Sanjay Kumar Resident of Flat No..2a, Durga Garden Apartment, Chhaju Bagh, Police Station - Gandi Maidan, District - Patna

... ... Petitioner/s

Versus

The Union of India Through The Assistant Director, Patna Zonal Office, Enforcement Directorate (Ed) Government of India

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. P.N. Shahi, Sr. Adv.
Mr. Krishna Chandra, Adv.

For the Opposite Party/s : Mr. Manoj Kumar Singh, Spl.P.P. (ED)
Mr. Ankit Kumar Singh, Adv.
Mr. Shivaditya Dhari Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA

ORAL ORDER

3 19-07-2024 Heard learned counsel for the parties.

2. The petitioner seeks bail in connection with Special Trial (PMLA) Case No. 10/2023 arising out of ECIR/PTZO/06/2021 dated 16.07.2021 and found to be involved in the offence of money laundering as defined under Section 3 and punishable under Section 4 of the Prevention of Money Laundering Act, 2002 (in brief as PMLA).

3. The prosecution case, in short, is that an FIR No. 02

of 2021 dated 02.01.2021 was registered by Gandhi Maidan Police Station against Shubham Gupta in respect of alleged crime of cheating and forgery covered under Sections 419, 420, 467, 468 and 471 of the Indian Penal Code for making an attempt to transfer a sum of Rs. 11,73,12,721/- from Account No. 1612046806 held by CALA CUM DLAO Patna and PD NHAI PIU Gaya NH-83, maintained with Kotak Mahindra Bank, Exhibition Road Branch, Patna, to the account no. 040405501628 of M/s B.S. Enterprises held with ICICI Bank, Boring Road Branch, Patna by using RTGS forms and letters with forged/fake signatures. On the basis of the Complaint from Kotak Mahindra Bank, Exhibition Road Branch, Patna, the Gandhi Maidan Police arrested Shubham Kumar Gupta on 02.01.2021 and filed a Charge Sheet No. 101/2021 dated 03.04.2021. Later on, the Gandhi Maidan Police also arrested Sumit Kumar, Sandeep Kumar Gupta and Shahrukh Khan @ Rijju and filed supplementary Charge-sheet No. 106/2021 against them on 21.04.2021.

4. In course of further investigation conducted by Gandhi Maidan Police Station, it was found that total of Rs. 31,92,70,129/- was fraudulently transferred from the account of CALA cum DLAO to the account of different entities/persons

using forged documents/fake signatures.

5. Accordingly, on the basis of FIR No. 02/2021 dated 02.01.2021 of Gandhi Maidan Police Station, Patna, an ECIR No. PTZO/06/2021 dated 16.07.2021 has been recorded by Enforcement Directorate, as Section 419, 420, 467 and 471 of the Indian Penal Code, 1860 are "Scheduled Offence" in terms of Section 2(1) (u) of Prevention of Money Laundering Act (PMLA), 2002.

6. The investigations under PMLA have revealed that out of total fraudulent transactions of Rs. 31.93 Crore (approx), on 27.10.2020, total amount of Rs. 5,34,51,850/- was fraudulently transferred to the bank account of Mohan Alankar Jewellers and Co. having bank account number 3811883480 maintained with Kotak Mahindra Bank, Boring Road Branch, Patna.

7. Learned counsel for the petitioner submits that M/s Mohan Alankar Jewelers and Co. is a Proprietorship firm. The petitioner is not the proprietor of M/s Mohan Alankar Jewellers & Co. nor the bank account is in the name of the petitioner. The father of the petitioner was proprietor and, after his death, the mother of the petitioner, namely, Renu Verma became proprietor of the firm which is engaged in the business of sell and purchase

of gold and other jewellery since last 45 years and running shops at different places in India. The petitioner used to sit at one of the shops situated at Dak Bunglaw Road, Patna and has nothing to do with the accused persons who are said to have diverted the government money kept in the account of the CALA-cum-District Land Acquisition Officer, Patna nor the petitioner has any connection with the employee of the Kotak Mahindra Bank. He submits that as a matter of fact, on 27.11.2020, one person namely Pankaj Patel came to the shop of the petitioner and showed his willingness to purchase 10 Kg. of gold for which he transferred Rs. 5,34,51,850/- to the bank account of M/s Alankar Jewelers and Co., Patna bearing A/c No. 3811883480 maintained with Kotak Mahindra Bank, Boring Canal Road Branch, Patna through RTGS. The said Pankaj Patel also handed over the photocopy of the PAN and Aadhar Card and, accordingly, the bill was issued for the same. He further alleged that on that day, there was only 3 Kgs. gold in the petitioner’s shop and he got ready to take 3 Kg. gold saying that he will come next week to collect the left over gold from the shop but, he never turned up to the shop. He further submits that in the meanwhile, total amount of Rs. 3,96,35,271.70/- which was lying in the account of M/s Mohan Alankar Jewelers and

Co., Patna was reverted back by the Bank. He further submits that in course of investigation, certain documents and other materials have also been seized by the Agency including cash amounting to Rs.11,51,500/- and gold and diamond jewelleries to the tune of Rs. 1.27 crore and, therefore, nothing remains to be recovered from the shop of the petitioner as the seized money and jewelries are more than the amount which was transferred into the account of M/s Mohan Alankar Jewelers and Co., Patna. The petitioner had no knowledge about the role of other persons as the petitioner has no connection with them nor the petitioner has any information regarding internal working of Kotak Mahindra Bank. The petitioner has no direct role in the alleged transaction. The petitioner has four criminal antecedents and in all of them, he is on bail as has been stated in Para-3 of the present bail application and is languishing in judicial custody since 07.03.2024 without any rhymes or reason.

8. *Per contra*, Mr. Manoj Kumar Singh, Special Public Prosecutor, appearing on behalf of the Enforcement Department has vehemently opposed the prayer for bail of the petitioner and has filed counter affidavit in the bail petition. Further, placing reliance on the judgment passed by Hon'ble Apex Court in the case of ***Vijay Madanlal Choudhary and Others vs. Union of India***

and others reported in ***2022 SCC OnLine SC 929***, learned counsel for the ED has submitted that the petitioner was involved in acquisition of proceeds of crime and its utilization in the business activities and also assisted the other accused persons in laundering of proceeds of crime generated from the fraudulent transactions executed from the account of CALA cum DLAO. He further submits that not only an amount of Rs. 5,34,51,850/- was fraudulently transferred on 27.11.2020 to the bank account of M/s Mohan Alankar Jewelers & Co. but also the received amount in the nature of proceeds of crime was further converted into three FDs amounting to Rs. 1 crore each on 02.01.2021 in the name of Smt. Renu Verma and the petitioner/Saurav Kumar was made nominee in these three FDs which were made from the A/c No. 3811883480 of M/s Alankar Jewelers & Co. Such transaction was not towards any mercantile or regular/normal business transaction and, thus, the petitioner was directly involved in management of business and financial activities of M/s Mohan Alankar Jewellers and Co. which received a portion of proceeds of crime from the various fraudulent transactions which was transferred and further utilized by the petitioner. In Para-11 of the counter affidavit, while dealing with the facts of the case, it has been stated that out of total amount of Rs. 5,34,51,850/-, an amount of Rs. 3,96,35,271.70/- has been taken back by the Kotak Mahindra Bank on 06.01.2021 and remaining amount of Rs. 1,38,16,578.30/- is outstanding with M/s Mohan Alankar Jewellers & Co. which was also admitted by Smt. Renu Verma in her statement recorded under Section 17(1) of the PMLA, 2002.

9. Learned counsel for the ED has further submitted that the twin conditions provided under Section 45(1)(i & ii) of the PMLA, 2002 restrict the right of the accused to grant of bail. Learned Special Public Prosecutor has further submitted that as per proviso of Section 45(1), the petitioner does not fall under the exceptions for grant of bail as the petitioner is not under the age of sixteen years or is a women or sick or infirm or is accused of money-laundering a sum of less than one crore rupees.

10. Learned counsel for the ED has thus, finally submitted that the investigation reveals that the petitioner has acquired proceeds of crime and is involved in layering and laundering the same by transferring the proceeds of crime and further exhausted the proceeds of crime and, hence, he is liable for the offence of money laundering and the instant petition is

liable to be rejected.

11. At this stage, learned senior counsel appearing on behalf of the petitioner submits that the petitioner is ready to deposit the outstanding amount of Rs. 1,38,16,578.30 in ten equal installments, if he is granted bail by this Hon'ble Court.

12. Having heard rival contention of both the parties, the undertaking of the petitioner to deposit the outstanding amount of Rs. 1,38,16,578.30/- in ten equal installments and considering the entire facts and circumstances of the case, this Court is of the view that there are reasonable grounds for believing that while on bail, the petitioner is not likely to commit any offence, and thus, this Court is inclined to grant bail to the petitioner.

13. Accordingly, let the petitioner, abovenamed, be released on bail, on furnishing bail bonds of Rs. 25,000/- (Twenty five thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge (PMLA), Patna in connection with Special Trial (PMLA) Case No. 10/2023 arising out of ECIR/PTZO/06/2021, subject to the following conditions;

(i) The first of the installments will be deposited in the court below within a period of one month from the date of release of the petitioner and thereafter rest nine installments shall be deposited by the petitioner on 5th of every month.

(ii) One of the bailor(s) shall be the own/close family members of the petitioner.

(iii) The petitioner shall not leave the country/territorial jurisdiction of the court below without prior permission of the learned court below.

(iv) The petitioner shall cooperate in the trial and shall be properly represented on each and every date fixed by the court and shall remain physically present as directed by the Court and in the event of failure on two consecutive dates without sufficient reasons, his bail bond shall be liable to be cancelled by the court below.

(v) The petitioner further undertakes that he will not tamper with the evidence or the witnesses of the case by intimidating/pressurizing the witnesses, during the investigation or trial.

(vi) In case of violation of any of the aforesaid condition(s), the prosecution will be at liberty to proceed for cancellation of the bail bonds of the petitioner.

14. It is also made clear that the amount so deposited

by the petitioner in the court below shall be subject to final outcome of the case.

(Rudra Prakash Mishra, J)

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