

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.29922 of 2023**

Arising Out of PS. Case No.-2 Year-2016 Thana- GOVERNMENT OFFICIAL COMP.
District- Patna

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Dinesh Prasad Gupta Son of Ramchandra Sao Resident of Pokharpur, P.S. -
Giriyak, Distt. - Nalanda - 803115

... .. Petitioner/s

Versus

1. The Union of India, New Delhi
2. The Assistant Director, Directorate of Enforcement Government of India, 1st Floor, Chandpura Palace The Assistant Director, Directorate of Enforcement Government of India, 1st Floor, Chandpura Palace, Bank Road, West Gandhi Maidan, Patna - 800001
3. District Manager, Bihar State Food and Civil supplies Corporation, Nalanda Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. S.D. Sanjay, Sr. Adv. Mr. Vishal Kumar, Adv. Mr. Rahul Kumar, Adv.
For the E.D.	:	Mr. K.N. Singh (ASGI) Mr. Manoj Kumar Singh, Adv. Mr. Shivaditya Dhari Shinha, Adv.
For the BSFC	:	Mr. Shailendra Kr. Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA

ORAL ORDER

14 27-02-2024 Heard learned counsel for the parties.

2. The petitioner seeks bail in connection with

Special Trial (PMLA) No. 07 of 2018 for the offence

committed under Sections 3 and 4 of the Prevention of

Money Laundering Act (hereinafter to be referred to as

"PMLA") in ECIR No. PTZO/02/2016 dated 26.08.2016.



3. The petitioner has earlier filed an anticipatory bail petition in this case i.e. PMLA Case No. 07 of 2018 arising out of Giriyak P.S. Case No. 77 of 2013 before this Court bearing Cr. Misc. No. 44378 of 2019 for the offence under Section 3 and 4 of the PMLA which was dismissed by order dated 16.08.2022. Thereafter, the petitioner filed special leave petition vide SLP No. 8395 of 2022, Cr. Appeal No. 432 of 2023. The Hon'ble Apex Court passed order on 13.02.2023 wherein the Apex Court referred the submission made by the learned advocate of the respondent to the extent that custodial investigation in the case is not necessary and secondly, the petitioner had participated in the investigation. The petitioner was further directed by the Hon'ble Apex Court to appear before the investigating agency. Thereafter, the Apex Court gave direction to the petitioner to appear and seek regular bail. Accordingly, the petitioner appeared on 24.02.2023 and filed surrender cum bail petition. Later on, the bail petition was rejected by the order dated 29.03.2023.



4. The brief fact of this case is *inter-alia* that the Assistant Director, Directorate of Enforcement, Government of India has filed a written complaint to the Special PMLA Court Patna wherein allegation has been made that the petitioner had made agreement with the District Manager, SFC, Nalanda for milling of rice on 17.12.2011. Accordingly, the SFC had supplied 190381 qt. of paddy for milling. As per agreement, the petitioner had to supply 67% of rice which comes to 129459 qt. of rice. The petitioner, however, had supplied only 75593.39 qt. of rice and, therefore, the petitioner had failed to deposit 54,165.7 qt. of rice to the Corporation. The District Manager, SFC, Nalanda, therefore, lodged the FIR in Giriyak Police Station, Nalanda for recovery of price of rice amounting Rs. 10,15,94,962/-.

5. The Nalanda police concluded the investigation and had filed charge-sheet before the Chief Judicial Magistrate, Nalanda bearing 243/2013. A petition, thereafter, was filed by the Superintendent of Police, Nalanda to the Economic Unit of Bihar, Patna who, in turn, referred the case to the Directorate of Enforcement,



Government of India, Patna Office, Patna. The authority under PMLA had made further investigation and had found that some of the properties were purchased by petitioners out of the sale proceeds of rice. On this basis, this complaint petition has been filed before the learned Special Court, Patna where cognizance has been taken under Section 4 of the PMLA dated 03.12.2018.

6. It is submitted by the learned senior counsel appearing on behalf of the petitioner that the petition for regular bail rejected by the learned Special Judge is not just and reasonable. The petitioner had filed Special Leave Petition vide SLP No. 8395 of 2022, Criminal Appeal No. 432 of 2023 and vide order dated 13.02.2023, the Hon'ble Apex Court observed that the petitioner may move for regular bail before the Court in question and the Court was also directed to take a decision in the application for bail, if moved, at the earliest.

7. Learned senior counsel appearing on behalf of the petitioner submits that the allegation made against the petitioner is false and concocted as no offence under Section



4 is made out against the petitioner because as per the fact available on record, no predicated offence i.e. offence under Section 420 is made out against the petitioner even after taking the allegation made in the F.I.R. and submits that the version in the F.I.R. and the agreement is quite different and thus, casts serious doubt about the version of the prosecution.

8. He further submits that the petitioner may be granted bail by holding the triple test of flight risk, tampering with evidence and influencing of witnesses in favour of the appellant. The investigating has been completed and the charge-sheet has also been submitted and thus, the matter is in the court and the E.D. has now no role to play in the matter. There is no risk of tampering the evidence or any flight risk if the petitioner is granted bail by this Court.

9. Learned senior counsel for the petitioner has also submitted that the petitioner fulfills the twin conditions as mandated under Section 45 (1) of the PMLA which says that where the Court is satisfied that there are reasonable grounds for believing that the petitioner is not guilty of such



offence and he is not likely to commit any offence while on bail shall be released on bail.

10. Per contra, Mr. K.N. Singh, learned senior advocate appearing on behalf of the ED and Mr. Shailendra Kr. Singh, learned counsel appearing on behalf of the Corporation have vehemently opposed the prayer for bail of the petitioner. 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 senior counsel for the ED has 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. He further submits that as per proviso of Section 45(1), he also does not falls under the exceptions for grant of bail as the petitioner is not under the age of sixteen years or is a woman or is sick or infirm or is an accused of money-laundering a sum of less than one crore rupees. Thus, he has submitted that in terms of Section 45 of the PMLA, 2002, the offence under PMLA is cognizable and non-bailable,



which reads as under:-

"45. Offences to be cognizable and non-bailable.- (1) [Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence [under this Act] shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail"

11. In reply, learned counsel for the petitioner has submitted that though there is some restrictions for grant of bail under Section 45 of the PMLA, 2002 but, it cannot be said that the conditions provided under Section 45 impose absolute restraint on the grant of bail. The discretion vests in the Court which is not arbitrary or irrational but judicial, guided by the principles of law as provided under Section 45 of the 2002 Act.



12. Learned counsel for the ED by filing counter affidavit in the matter has again submitted that the petitioner, Partner of M/s Pawapuri Rice Mill is knowingly involved in acquisition, concealment, transfer of proceeds of crime and projection of the same as untainted and, therefore, the petitioner has committed the offence of Money Laundering as defined under Section 3 & 4 of the PMLA, 2002. He has further stated that in course of statement recorded under Section (2) and (3) of Section 50 of the PMLA, 2002, the petitioner has admitted that he has not returned the required stipulated quantity of rice to the FCI as per Agreement. He has further pointed out that after execution of the Agreement, the proceeds of crime in the form of cash sales of rice were invested to the tune of Rs. 52.18 lacs in purchase of immovable properties in the name of his wife. In the statement, his wife has also stated that she has no independent source of income. He has further stated that the Company has willfully and intentionally suppressed the actual turnover of Rs. 11,69,06,455/- as per Audit Report submitted by the Managing Director of the



Company which were nothing but sale proceeds of defalcated rice.

13. Considering the entire facts and circumstances of the case and having considered the rival submissions made by the learned counsel for the parties as also after going through the records including supplementary and counter affidavit filed on behalf of the parties, this Court directs for release of the petitioner, abovenamed, on bail on furnishing bail bonds of Rs.10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of learned Session Judge cum Special Judge, Patna in connection with Complaint Case No. 7 of 2018, ECIR No. PTZO/02/2016, Special Trial No. (PMLA) 07 of 2018, subject to the following conditions;

(i) The petitioner shall not leave the territory of Bihar without prior leave of the learned Session Judge cum Special Judge, PMLA, Patna where the case is now pending.

(ii) One of the bailors shall be the own/close family member of the petitioner.

(iii) The petitioner shall appear on each and every



date fixed at the trial. In case of default in such appearance on two consecutive dates, the competent authority will be at liberty to file an application for cancellation of bail bonds of the petitioner before the learned Session Judge cum Special Judge, PMLA, Patna.

(Rudra Prakash Mishra, J)

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