

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71461 of 2023**

Arising Out of PS. Case No.-7 Year-2016 Thana- E.C.I.R (GOVERNMENT OFFICIAL)
District- Patna

Vinod Kumar Singh, Son Of Late Surendra Prasad Singh Resident Of Flat
No. 102, Party View Apartment, Road No. 6b, Rajendra Nagar, P.S.-
Kadamkuan, District-Patna.

... .. Petitioner/S

Versus

The Union Of India Through Assistant Director (PMLA), Directorate Of
Enforcement, Patna (Bihar). Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Pankaj Kumar Sinha- Advocate Mr. Kumar Mritunjay- Advocate
For Union of India	:	Dr. K.N. Singh (ASG)
For the E.D.	:	Mr. Tuhin Shankar- Advocate Mr. Gopal Kumar- Advocate Mr. Vaibhav Vikram Singh- Advocate

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

8 22-07-2024 1.Heard learned counsel for the petitioner
and the learned counsel appearing for Enforcement
Directorate.

2.The petitioner seeks bail in anticipation
of his arrest in Special Trial (PMLA) No.2 of 2022
arising out of ECIR No.PTZO/07/2016 registered for
the offences punishable under Sections 3 and 4 of
the Prevention of Money Laundering Act, 2002.

3.The learned counsel for the petitioner, at
the outset, submits that the Hon'ble Supreme
Court in the case of ***Tarsem Lal vs. Directorate
of Enforcement, Jalandhar Zonal Office
(Criminal Appeal No.2608 of 2024 along with***



other Criminal Appeals and SLP) was considering the cases of accused, who were not arrested after registration of the ECIR till Special Court took cognizance under the PMLA of an offence punishable under Section 4 of the PMLA. The cognizance was taken on the complaint filed under Section 44(1)(b) of the PMLA.

4.The appellants after issuance of summons had not appeared before the Court leading to issuance of warrant, the appellants applied for anticipatory bail which was rejected by the High Court. Thereafter, they moved before the Hon'ble Supreme Court and the Hon'ble Supreme Court after discussing the Case Laws in detail issued directions:-

“23. Now, we summarise our conclusions as under:

a) Once a complaint under Section 44 (1)(b) of the PMLA is filed, it will be governed by Sections 200 to 205 of the CrPC as none of the said provisions are inconsistent with any of the provisions of the PMLA;

b) If the accused was not arrested by the ED till filing of the complaint, while taking cognizance on a complaint under Section 44(1)(b), as a normal rule, the Court should issue a summons to the accused and not a warrant. Even in a case where the accused is on bail, a summons must be issued;



c) After a summons is issued under Section 204 of the CrPC on taking cognizance of the offence punishable under Section 4 of the PMLA on a complaint, if the accused appears before the Special Court pursuant to the summons, he shall not be treated as if he is in custody. Therefore, it is not necessary for him to apply for bail. However, the Special Court can direct the accused to furnish bond in terms of Section 88 of the CrPC;

d) In a case where the accused appears pursuant to a summons before the Special Court, on a sufficient cause being shown, the Special Court can grant exemption from personal appearance to the accused by exercising power under Section 205 of the CrPC;

e) If the accused does not appear after a summons is served or does not appear on a subsequent date, the Special Court will be well within its powers to issue a warrant in terms of Section 70 of the CrPC. Initially, the Special Court should issue a bailable warrant. If it is not possible to effect service of the bailable warrant, then the recourse can be taken to issue a non-bailable warrant;

f) A bond furnished according to Section 88 is only an undertaking by an accused who is not in custody to appear before the Court on the date fixed. Thus, an order accepting bonds under Section 88 from the accused does not amount to a grant of bail;

g) In a case where the accused has furnished bonds under Section 88 of the CrPC, if he fails to appear on subsequent dates, the Special Court has the powers under Section 89 read with Sections 70 of the CrPC to issue a warrant directing that the accused shall be arrested and produced before the Special Court; If such a warrant is issued, it will always be open for the accused to apply for cancellation of the warrant by giving an undertaking to the Special Court



to appear before the said Court on all the dates fixed by it.

While cancelling the warrant, the Court can always take an undertaking from the accused to appear before the Court on every date unless appearance is specifically exempted. When the ED has not taken the custody of the accused during the investigation, usually, the Special Court will exercise the power of cancellation of the warrant without insisting on taking the accused in custody provided an undertaking is furnished by the accused to appear regularly before the Court. When the Special Court deals with an application for cancellation of a warrant, the Special Court is not dealing with an application for bail. Hence, Section 45(1) will have no application to such an application;

h) When an accused appears pursuant to a summons, the Special Court is empowered to take bonds under Section 88 of the CrPC in a given case. However, it is not mandatory in every case to direct furnishing of bonds. However, if a warrant of arrest has been issued on account of nonappearance or proceedings under Section 82 and/or Section 83 of the CrPC have been issued against an accused, he cannot be let off by taking a bond under Section 88 of the CrPC, and the accused will have to apply for cancellation of the warrant;

i) After cognizance is taken of the offence punishable under Section 4 of the PMLA based on a complaint under Section 44 (1)(b), the ED and its officers are powerless to exercise power under Section 19 to arrest a person shown as an accused in the complaint; and

j) If the ED wants custody of the accused who appears after service of summons for conducting further investigation in the same offence, the ED will have to seek custody of the accused by applying to the Special Court. After hearing the accused, the Special Court must pass an order on the



application by recording brief reasons. While hearing such an application, the Court may permit custody only if it is satisfied that custodial interrogation at that stage is required, even though the accused was never arrested under Section 19. However, when the ED wants to conduct a further investigation concerning the same offence, it may arrest a person not shown as an accused in the complaint already filed under Section 44(1)(b), provided the requirements of Section 19 are fulfilled.”

5. It is further submitted that the Hon’ble Supreme Court further made it clear by recording:-

24. We are making it clear that we are dealing with a fact situation where the accused shown in the complaint under Section 44(1)(b) of the PMLA was not arrested by the ED by the exercise of power under Section 19 of the PMLA till the complaint was filed.

6. The learned counsel appearing on behalf of the petitioner submits that in sum and substance what has been decided by the Hon’ble Supreme Court is that once an ECIR is filed and the accused is not arrested during the course of investigation and thereafter, cognizance comes to be taken in that event, the ED loses its power to arrest the accused without seeking permission of the Special Court.

7. It is next submitted that in the present



case also an F.I.R. was instituted for the predicate offence based on which the instant ECIR was instituted and the petitioner during the course of investigation always cooperated with the ED in the investigation, but the ED never felt the need of arresting the petitioner, thereafter, the complaint came to be filed based on which cognizance was taken and thus, the petitioner apprehends his arrest and has moved this Court seeking anticipatory bail.

8.It is next submitted that the case be disposed of in terms of the order dated 16.05.2024 in Cr. Appeal No.2608 of 2024 decided by the Hon'ble Supreme Court in the case of Tarsem Lal vs. the Directorate of Enforcement, Jalandhar Zonal Office.

9.The learned counsel appearing on behalf of the Enforcement Directorate is not in a position to rebut the submission of the learned counsel appearing on behalf of the petitioner that after cognizance is taken of the offence punishable under Section 4 of the PMLA based on a complaint



under Section 44(1)(b) of the PMLA, the ED and its officers are powerless to exercise power under Section 19 of the PMLA to arrest a person shown as an accused in the complaint.

10. In view of the submissions made by the learned counsel appearing on behalf of the petitioner, the instant anticipatory bail application is disposed of in terms of the order dated 16.05.2024 passed by the Hon'ble Supreme Court in Criminal Appeal No.2608 of 2024.

11. The learned trial Court is directed to strictly adhere to the directions contained in the order dated 16.05.2024 passed by the Hon'ble Supreme Court in Criminal Appeal No.2608 of 2024 (Tarsem Lal vs. the Directorate of Enforcement, Jalandhar Zonal Office).

(Satyavrat Verma, J)

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