

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2217 of 2024

Arising Out of PS. Case No.-14 Year-2023 Thana- E.C.I.R (GOVERNMENT OFFICIAL)
District- Patna

Subhash Prasad Yadav Son of Premadhar Ray @ Prem Dhar Ray Resident of
Village - Hetanpur, P.O. - Madhopur, Khagaul, P.S. - Shahpur, District - Patna.

... .. Petitioner/s

Versus

1. The Union of India through the Assistant Director, Enforcement Directorate, Patna Zonal Office 1st Floor, Chandpura Place, Bank Road, West Gandhi Maidan, Patna
2. The Assistant Director, Enforcement Directorate, Patna Zonal Office 1st Floor, Chandpura Place, Bank Road, West Gandhi Maidan, Patna
3. The State of Bihar, through the Principal Secretary, Department of Home, Govt. of Bihar Old Secretariat, Patna
4. The Principal Secretary, Department of Home, Govt. of Bihar, Old Secretariat, Patna Bihar
5. The Secretary Cum Inspector General, Prison and Correctional Services, Dept of Home, Govt. of Bihar Old Secretariat, Patna
6. The District Magistrate Cum Collector, Patna Bihar
7. The Superintendent of Jail, Adarsh Central Jail, Beur, Patna Bihar
8. The Superintendent of Police, Patna, Bihar Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Y.V. Giri, Sr. Adv. Mr.Suraj Samdarshi, Adv. Mr.Avinash Shekhar, Adv. Mr.Vijay Shanker Tiwari, Adv. Mr.Rohit Singh, Adv. Ms.Abhilasha Jha, Adv. Ms.Simran Kumari, Adv.
For the State	:	Mr.P.K. Shahi, Sr. Adv. (AG)
For the ED	:	Mr.K.N. Singh, Sr. Adv. (ASG) Mr.Manoj Kumar Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

3 30-10-2024 Heard learned Senior Counsels appearing on behalf of the
petitioner, State and for the ED.



2. The present writ application has been filed for issuance of an appropriate order or direction granting interim bail/provisional bail to the petitioner from 30.10.2024 till 12.11.2024 for undertaking his election campaign for contesting the Jharkhand State Assembly Election from constituency no.19 i.e. Kodarma.

3. The fact of the case, in brief, is that the petitioner has been arrested by the ED on 09.03.2024, in connection with ECIR No. PTZO/14/2023 dated 15.03.2023 and complaint under Section 44 and 45 of the PMLA has also been filed by the Ed. The petitioner is presently incarcerated in the judicial custody. The learned Spl. Court took cognizance which resulted into the special trial (PMLA) Case No.02/2024, and the petitioner filed discharge application before Id. Special Court, which is pending for adjudication.

4. Thereafter, the petitioner filed Cr. Misc 49347/2024 before this court seeking regular bail, which is also currently pending for adjudication, since the chances of disposal of bail application prior to 25.10.2024 was bleak, the petitioner was left with no other option than to file Cr.WJC No. 2163/2024 before this Court, seeking a direction upon the authorities to produce the petitioner before the Returning Officer of Koderma between



18.10.2024 and 25.10.2024 between the hours of eleven o' clock in the forenoon and three o' clock in the afternoon, so that he can swear the affidavit and file his nomination paper. The coordinate bench of this Court, though allowed the writ application of the petitioner but the learned counsel for the respondent, AAG 13 submits an application for modification of the order dated 22.10.2024 passed by the coordinate bench of this Court. The coordinate bench allowed the modification application and recalled its order dated 22.10.2024 vide order dated 24.10.2024.

5. Meanwhile, the regular bail petition bearing Cr. Misc 49347/2024 and allied cases were heard by the coordinate bench of this Court as a tied up matter and vide order dated 05.10.2024, directed the matter to be listed on 18.10.2024 at 02:15 PM. It is pertinent to note here that the Court was on vacation of Durga Puja and meanwhile the constitution of benches of this court underwent some changes and the coordinate Bench which was earlier sitting as single bench, was now sitting as Division Bench. This fact would be evident from the Constitution of Benches made effective from 17.10.2024.

6. Cr. Misc 49347/20204 was adjourned on 18.10.2024 and listed for 25.10.2024, i.e, on Friday, because according to the



Constitution of Bench, all tied up matters are to be listed only on Friday but even on 25.10.2024, the matter was not taken up and the next date mentioned is 22.11.2024. Subsequently, the petitioner approached this Court.

7. The present writ application has been filed on 25.10.2024. Earlier, the petitioner has filed a Criminal Writ Jurisdiction Case No.2163 of 2024 and vide order dated 22.10.2024, a co-ordinate Bench of this Court has granted relief to the petitioner and disposed of the same, directing the respondent authorities to carry and produce the petitioner before the above referred authorities to facilitate filing his nomination papers within time i.e. prior to 24th of October, 2024.

8. Pursuant to the order passed by the co-ordinate Bench, the petitioner has filed his nomination paper before the Returning Officer of the Koderma in the State of Jharkhand.

9. Learned Senior Counsel for the petitioner submits that the order dated 22.10.2024, passed in Cr.W.J.C. No.2163/2024 was recalled vide order dated 24.10.2024, noting that the same was passed without hearing the necessary party i.e. Enforcement Directorate and the Registry was directed to list this petition before another Bench after getting necessary approval of the Hon'ble Chief Justice. Thereafter, the petitioner has filed the



present criminal writ application on 25.10.2024 for grant of interim bail/provisional bail to the petitioner from 30.10.2024 till 12.11.2024 for undertaking his election campaign for contesting the Jharkhand State Assembly election from constituency no.19 i.e. Koderma.

10. The Hon'ble Chief Justice has approved this matter to be listed before this Bench. It is pertinent to mention that the petitioner has earlier filed Cr. Misc. No.49347/2024 before this Court seeking regular bail and the co-ordinate Bench, after hearing the parties, passed order dated 05.10.2024 in Cr. Misc. No.34015 of 2024 and analogous cases and in para-26 has stated that the argument on behalf of the petitioner has been closed. On the next date, learned counsel for the Union of India (Enforcement Directorate) shall start argument and it was directed to be listed on 18.10.2024 at 2:15 PM.

11. Learned Senior Counsel for the petitioner submits that before the case could have been listed, the roster has been changed. The petitioner was hopeful that on 18.10.2024, Hon'ble Mr. Justice Dr. Anshuman would sit singly and hear tied up matter. However, on 18.10.2024, single bench of Mr. Justice Dr. Anshuman was not constituted as His Lordships was now sitting in Division Bench.



12. It is submitted that therefore, he filed the present criminal writ application for grant of interim relief. In support of his contention, learned Senior Counsel relied upon the judgment of the Apex Court in the case of *Arvind Kejriwal vs. Directorate of Enforcement* reported in *(2024) SCC Online SC 848* and emphasized upon para-7, 10, 11, 12 and 18 of the said judgment and submits that the Apex Court released Arvind Kejriwal on interim bail for campaigning in the Lok Sabha Elections. He further relied upon the judgment passed by the Punjab and Haryana High Court in the case of *Sadhu Singh Dharamsot vs. Directorate of Enforcement*, wherein, relying upon the *Arvind Kejriwal (supra)*, the Court has allowed the petitioner of that case to be released on interim bail for campaigning in the election.

13. Learned Senior Counsel for the petitioner did not deny this fact that the regular bail application of this petitioner is pending before this Court.

14. Learned Advocate General as well as learned Additional Solicitor General opposed the prayer for bail by submitting that the petitioner, who is seeking regular bail, instead of filing an application for grant of provisional bail in the aforesaid bail application, has filed the present Criminal Writ for campaigning



in the Election. Since the bail application of the petitioner is already pending before this Court, petitioner cannot seek two parallel remedy for release from jail.

15. They relied upon the judgment passed by the Hon'ble Apex Court in the case of ***United Bank of India Vs. Satyawati Tandon and Others Civil Appeal No.5990 of 2010*** and in particular, para-43 of the said judgment, is quoted hereunder:-

“Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial



bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute”.

16. They further relied upon the judgment passed by the Hon’ble Apex Court in the case of ***Vishwanath Pratap Singh Vs. Election Commission of India & Anr. reported in 2022 LiveLaw (SC) 758***. In the said judgment, Hon’ble Apex Court relying upon paragraph-22, of the order passed in Javed vs. State of Haryana, (2003) 8 SCC 369, has held that:

“22. Right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute. At the most, in view of Part IX having been added in the Constitution, a right to contest an election for an Office in Panchayat may be said to be a constitutional right – a right originating in the Constitution and given shape by a statute. But even so, it cannot be equated with a fundamental right. There is nothing wrong in the same statute which confers the right to contest an election also to provide office and also to provide for



disqualifications which would disable a person from contesting for, or holding, an elective statutory office.”

17. Having heard both the sides, it is an admitted fact that the petitioner has already filed a regular bail application before this Court which is still pending and knowing this fact, petitioner has filed the present Criminal Writ Application for interim bail for campaigning in the Election, therefore, it is not just and proper for this Bench to pass any order in favour of the petitioner. The judgments relied upon by the learned Senior Counsel for the petitioner is also not relevant in the facts and circumstances of the present case.

18. Considering the arguments advanced on behalf of the parties, I am not inclined to entertain this criminal writ application and it is accordingly dismissed.

(Anjani Kumar Sharan, J)

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