IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.30483 of 2024

Arising Out of PS. Case No.-19 Year-2012 Thana- E.C.I.R (GOVERNMENT OFFICIAL) District- Patna

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Baidyanath Das son of Late Jai Das Retd. Additional Commissioner, Patna Municipal Corporation, Resident of Mohalla- Jawahar Colony, Kankarbagh, P.S.- Kankarbagh, Dist.- Patna

... ... Petitioner/s

Versus

1. The State of Bihar
2. the Union of India through The Assistant Director, Directorate of Enforcement, Govt. of India Patna zonal Office, Bank Road, Chandpura Place, Patna

... ... Opposite Party/s

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Appearance :

For the Petitioner	:	Mr. Salahuddin Khan, Advcate Mr. Ravi Shankar, Advocate
For the O.P./UOI	:	Dr. Krishna Nandan Singh, Sr.Adv.(ASG) Mr. Manoj Kumar Singh (ED) Mr. Ankit Kumar Singh (J.C.)
For the State	:	Mr. Rajendra Nath Jha, APP

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT
Date : 07-05-2025

This is an application for grant of anticipatory bail to the petitioner in connection with Special Trial (PMLA) Case No. 08 of 2022, arising out of ECIR/19/Pat/2012, instituted for offences punishable under Sections 3 & 4 of the Prevention of Money Laundering Act, 2002 (for short “PMLA”).

2. The prosecution case, in brief, is that Charge Sheet No 70/2012 dated 27.07.2012 in FIR No.54/2010 dated 21.07.2010 was filed before the Court of Special Judge, Vigilance-I, Patna and the petitioner namely Baidyanath Das was one of the charge-

sheeted accused person. It is alleged in the charge-sheet that accused person namely K. Senthil Kumar, IAS (Batch-96), the then Commissioner of Patna Municipal Corporation, in collusion with Baidyanath Das, the then Additional Commissioner of Patna Municipal Corporation and others, caused wrongful loss of Rs.8,76,81,110/- to the Patna Municipal Corporation and thus, committed offences punishable under Sections 420, 467, 471, 120B of Indian Penal Code and Section 13 of Prevention of Corruption Act, 1988. Accordingly. ECIR/19/PAT/2012 was registered for the purpose of investigation under PMLA and prevent money laundering. It is further alleged that during the tenure of K Senthil Kumar, IAS, in connivance with other officers has taken illegal gratification from builder, mafia, developers, private suppliers and service providers and caused huge loss to PMC. The major revenue losses were caused on account of legal statutory approval of maps for construction of 130 multi-storied apartments to the tune of Rs. 7,46,66,669/ and of legal allotment of hoardings of five advertisement agencies to the tune of Rs.40,38,133/-. It is further alleged that under the influence of Hotel Lobby of Patna, accused K. Senthil Kumar caused revenue loss of Rs.64,41,225/- on account of lesser collection of holding tax from five hotels of Patna and other irregularities causing loss of Rs. 25 lakhs to Patna Municipal Corporation. It is further alleged that Baidyanath Das (petitioner), in collation with main accused K. Senthil Kumar and other officials of PMC, has violated the financial rule and regulation of Patna Municipal Corporation like two-way communication, street light, high-mast light and diesel pump set for solid waste management, construction of slaughter house by allocation of work to the favoured entities. It is further alleged that Baidyanath Das (petitioner) had assisted K Senthil Kumar in according approval of maps for different projects in direct violation of existing rules and regulations resulting in huge loss to government exchequer and generation of proceeds of crime.

3. Learned counsel for the petitioner submits that petitioner is innocent and has committed no offence. Petitioner is a Retired Additional Commissioner of Patna Municipal Corporation and the entire allegations of conspiracy, collusion and assistance against this petitioner is false, fabricated and imaginary. Petitioner has got no concern with the alleged financial irregularity and he does not know about the technicalities of Map Planning which is the exclusive work of the Engineers and ultimate authority is the Commissioner to pass or reject the Map. The file of Map Planning moves from clerk to J.E.. Executive Engineer and then to the

Additional Commissioner for onward transmission to the Commissioner and the petitioner is just like a Post Office, who simply forwards the file of Map Planning to the Commissioner for final approval and is not responsible in any violation in Map Plan. He further submits that petitioner was only concerned to verify fixed rate of amount per square feet from the advertisers, which is fixed by the Government, and petitioner always directed to realize the fixed amount per square feet. The petitioner is not the authority of any purchase or any agreement and it is the exclusive business of the Commissioner vis-a-vis the dealer of Contractor and has nothing to do with any agreement with any contractor or tender. Being the Additional Commissioner, the petitioner used to hear appeal against the assessment of holdings but he received no such complaint from any corner. He next submits that the petitioner has been implicated in the instant case without any cogent evidence to connect him with the alleged occurrence and there is no material to show that the petitioner received illegal gratification from any quarter. The name of this petitioner has merely been added as an accused to surmise as conspirator. From perusal of complaint petition, it is apparent that neither there is any disproportionate, income nor any property was purchased by the petitioner in his entire service and as such, no property of bank account was seized or attached by the Enforcement Directorate (for short “ED”). The real culprits are the Engineers/Executive Engineers who are accused in the Vigilance case, have been left out by the ED and this petitioner has falsely been implicated in this case as an scapegoat.

4. Learned counsel for the petitioner fairly submits that petitioner in accused in one case i.e. Special Case No. 54 of 2010, arising out of Vigilance Case No. 54 of 2010 with exactly similar allegation, in which, this petitioner has already been granted anticipatory bail by this Court, vide order dated 07.03.2012 passed in Cr.Misc. No. 1545 of 2012 (Appexure P/2). Only allegation against this petitioner is that he assisted main accused Senthil Kumar in committing irregularity and causing revenue loss to the government. He further submits that the case, in which entire allegation was levelled against co-accused Senthil Kumar, has been quashed by a coordinate Bench of this Court, vide order dated 09.11.2023 passed in Cr.Misc. No. 4420 of 2023 (Annexure P/3).

5. Lastly, learned counsel for the petitioner submits that the case of petitioner for grant of pre-arrest bail is squarely covered by the judgment of Hon’ble Supreme Court in the case of ***Tarsem Lal versus Directorate of Enforcement***, reported in **2024**

(3) PLJR (SC) 119 wherein Hon’ble Supreme Court has held that once cognizance is taken of the offence punishable under Section 4 of the PMLA, the Special Court is seized of the matter and the ED & other authorities named in Section 19 of the PMLA cannot exercise the power of arrest of the accused shown in the complaint. Hon’ble Supreme Court has further held that once complaint is filed, it will be governed by Section 200 to 205 of Cr.P.C. as none of the said provisions are inconsistent with any of the provisions of the PMLA and the Special Court can direct the accused to furnish Bond in terms of Section 88 of the Cr.P.C. and may also grant on sufficient cause, exemption from personal appearance under Section 205 Cr.P.C. The Judgment of ***Tarsem Lal (Supra)*** was followed by the Hon'ble Supreme Court in the case of ***Vijay Ketan Sahu Vs. Enforcement Directorate*** bearing ***SLP (Cr.) No. 8325 of 2024*** wherein vide order dated 29.07.2024, the interim order was made absolute with observation that the Special Court may direct the appellant/petitioner to furnish bond for appearance in accordance with Section 88 of the Cr.P.C. Hence, on aforesaid ground, it has been prayed to allow the present anticipatory bail petition.

6. On the other hand, learned counsel appearing on behalf of opposite party/E.D. submits that once an accused appears

before the Special Court, he is deemed to be in its custody and as such, the accused must apply for bail under Section 439 of the Cr.P.C. However, on merit of the case, he submits that this petitioner, in collusion with other officers/officials of Patna Municipal Corporation, has violated the financial rule & regulation of Patna Municipal Corporation like two-way communication, street light, high-mast light and diesel pump-set for solid waste management, construction of slaughter house, by allocation of work to his favoured entity etc. and also caused revenue loss on account of illegal statutory approval of maps for construction of 130 multi-storied apartments to the tune of Rs. 7,46,669/-. The second major revenue loss has been caused on account of illegal allotment of hoardings to the 5 advertisement agencies to the tune of Rs. 40,38,133/-.

7. Learned counsel for the Enforcement Directorate relies upon a decision of the Supreme Court in the case of ***Vijay Madanlal Choudhary & Ors. vs Union of India, reported in 2022 SCC OnLine SC 929*** and has also relied upon a decision of Orissa High Court in the case of ***Mohd. Arif vs Directorate of Enforcement, reported in 2020 SCC OnLine Ori 544.*** However, learned counsel for the opposite party, in paragraph – 4 of the counter affidavit, submits that in the light of judgment passed by

Hon'ble Supreme Court in ***Tarsem Lal's case (supra)***, the present anticipatory bail of petitioner be disposed of.

8. Heard the submissions so advanced by learned counsel for the parties and perused the materials available on record. This Court is in agreement with the submission advanced by learned counsel for the petitioner that once cognizance is taken of the offence punishable under Section 4 of the PMLA, the Special Court cannot exercise the power of arrest of the accused shown in the complaint and accordingly, the order impugned i.e. order dated 19.07.2023 passed by learned Sessions Judge /Special Judge (PMLA), Patna in Special Trial (PMLA) Case No. 08 of 2022, arising out of ECIR/19/Pat/2012 dated 06.12.2012, is, hereby, set aside, in the light of judgment of the Supreme Court in the case of ***Tarsem Lal (supra)*** and learned Special Court (PMLA), Patna is directed to consider the application of petitioner afresh and dispose of the same in the light of observation made by Hon'ble Supreme Court in paragraphs 23 & 25 of the case of ***Tarsem Lal (supra)*** with following conditions:

(i) The petitioner shall appear before the concerned Special Court within one month from the date of receipt / production of copy of this order and shall file an undertaking before the Special Court that he shall regularly and punctually appear before the

Special Court on the dates fixed unless his appearance is specifically exempted by the exercise of powers under Section 205 of the Cr.P.C.; and

(ii) The petitioner shall furnish bond in accordance with Section 88 of the Cr.P.C. to the satisfaction of the Special Court within one month from the date of receipt / production of copy of this order.

9. With above observation and direction, this petition is allowed.

(Prabhat Kumar Singh, J)

Anay

AFR/NAFR	NAFR
CAV DATE	N/A
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