IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.47285 of 2025

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

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Hemanshu Kishorebhai Trivedi S/O Late Kishorebhai Umashanker Trivedi @ Kishorebhai Umayashanker Trivedi R/O Flat No. 301, Madhupuri Co-operative Housing Society, V.P. Road, Opp- Railway Crossing, P.S. - Ville Parle Mumbai, Maharashtra- 400056.

... ... Petitioner/s

Versus

The Union of India through the Assistant Director, Enforcement Directorate, Patna Zonal Office Bank Road, Chandpura Place, Patna.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Santosh Kumar, Advocate

For the Opposite Party/s : Mrs. Prakritita Sharma, Advocate

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CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA

ORAL ORDER

6 24-11-2025 Heard learned counsel for the parties.

2. The petitioner seek bail in connection with Special Trial (PMLA) Case No. 03 of 2023 arising out of ECIR/PTZO/06/2021 dated 16.07.2021 instituted for the offences under Section 44 read with Section 45(1) of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA Act') for commission of offence of money laundering defined under Section 3 of PMLA, 2002.

3. Prosecution case, in brief, is that 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 Number-1612046806 of CALA CUM DLAO Patna and PD NHAI PIU Gaya NH-83, maintained with Kotak Mahindra Bank, Exhibition Road Branch, Patna to the account of B.S. Enterprises held with ICICI Bank, Boring Road Branch, Patna by using RTGS forms and letters with forged/fake signatures. A charge-sheet No. 101 of 2021 dated 03.04.2021 was filed by Gandhi Maidan P.S. against Shubham Gupta in this case and further a supplementary charge-sheet no. 106/2021 dated 21.04.2021 was also filed by Gandhi Maidan P.S. against Sandeep Kumar Gupta, Sarukh @ Riju and Sumit Kumar. It is alleged that in course of further investigation conducted by Gandhi Maidan P.S., it was found that total of Rs. 31,92,70,129/- (thirty one crores ninety two lacs seventy thousand one hundred and twenty nine) was fraudulently transferred from the account of CALA cum DLAO to the account of different entities/persons using forged documents/fake signatures. An FIR was registered and during investigation it has been revealed that out of total fraudulent transactions of Rs. 31.93 Crore (approx), approximately Rs. 8.77 Crore were transferred from the bank account number-1612046806, Kotak Mahindra Bank, Exhibition Road Branch, Patna of CALA CUM DLAO to the bank account no.-19110100001119 of Red Rose PL (a proprietorship concern of the petitioner) maintained with NKGSB Co-operative Bank Ltd, NKGSB Ville Parle(E) Branch, Mumbai.

4. Learned counsel appearing on behalf of the petitioner submits that the petitioner is quite innocent and has committed no offence as alleged in the complaint filed by the E.D. and the charge-sheet filed by the E.D. has failed to establish the link of trial of money with the petitioner. The E.D. has also not brought on record anything suggesting the role of the petitioner in syphoning of the funds. Learned counsel further submits that petitioner has no direct involvement in the alleged crime in question and out of Rs. 9 Lakh, an amount of Rs. 8,18,737/- has already been recovered as stated in paragraph no. 5 of the counter affidavit of the E.D. He further submits that the petitioner had no intention to cheat, as all transactions were conducted through legitimate bank channels, with full transparency and traceability. Most of the amount has already

been reverted back by the Bank in the account of CALA CUM DLAO, Patna, indicates the bona fide nature of the dealings and absence of any fraudulent intent. It is next submitted that there is nothing to show that the petitioner had any knowledge that the funds involved were proceeds of crime. The transactions appear to have been carried out in good faith and the absence of intent or awareness defeats the essential ingredient of culpability under Section 3 of the PMLA. Charge in this case has already been framed as back as on 28.08.2024 and till date out of 59 witnesses, no witness has been examined. The petitioner is in custody since 13.12.2023 i.e. for about two years and has got no criminal antecedent. It is also submitted that the petitioner is an aged person of 64 years and having serious health issues.

5. The Enforcement Department has filed its detailed counter affidavit in the matter. Mrs. Prakritita Sharma, learned advocate appearing on behalf of the E.D., referring to the counter affidavit, has submitted that on the basis of the FIR No. 02/2021 dated 02.01.2021 of Gandhi Maidan P.S., Patna, an ECIR No. PTZO/06/2021 dated 16.07.2021 was recorded by E.D., as Sections 419, 420, 467 and 471 of the I.P.C. are scheduled offence under the Prevention of Money Laundering Act (PMLA), 2002. She further submits that investigations

under PMLA have revealed that out of total fraudulent transactions of Rs.31.93 Crore (approx), approximately Rs.8.77 Crore were transferred from the bank account number-1612046806, Kotak Mahindra Bank, Exhibition Road Branch, Patna of CALA Cum DLAO to the bank account No.-19110100001119 of Red Rose P L (a proprietorship concern of Hemanshu Kishorebhai Trivedi) maintained with NKGSB Co-operative Bank Ltd, NKGSB Ville Parle E Branch, Mumbai. It is submitted that after receiving the fraudulent amount of Rs.8.77 crore (approx) in the account of his proprietorship concern Red Rose PL, Petitioner further transferred total amount of Rs. 9 lakh in his personal bank account No-019100100007544 maintained with NKGSB Co-op. Bank Ltd., Vile Parle (E) Branch, Mumbai and utilized the said amount of Rs.9 lakh for his personal uses and further he transferred the remaining amount to the bank account of different entities/persons. It is next submitted that, a summon was issued to petitioner on 29.07.2023 and served by hand on 02.08.2023 but he did not comply the summon and failed to appear before this directorate for recording of his statement u/s 50 of PMLA, 2002. Further, his statement was recorded on 13.12.2023 u/s 50(3) of MLA, 2002 wherein he admitted that he used to use the bank account of his proprietorship concern Red Rose P L in lieu of some commission. He further admitted that in lieu of commission, he purportedly and intentionally gave his Red Rose PL bank account details i.e. bank account no.- 19110100001119 maintained with NKGSB Co-Operative Bank Ltd., Vile Parle(E) Branch, Mumbai to his known Rajesh Tiwari and his brother-in-law namely Arun Kumar Debey for their use. He further admitted that in December 2020, in association with other accomplices, total amount of Rs.8,77,02,029/- was transferred fraudulently in the bank of account no.-19110100001119 of his concern Red Rose P L from the bank account no.-1612046806 held in the name of CALA CUM DLAO PATNA AND PD NHAI PIU GAYA. Further, the petitioner transferred the amount to the people and other companies, firms and individuals as per the direction of Rajesh Tiwari and Arun Kumar Debey in lieu of promised commission. He further admitted that out of the total amount of Rs.8,77,02,029/- transferred fraudulently to the bank account no.- 19110100001119 of his proprietorship concern Red Rose P L from the bank account of CALA cum DLAO, he received commission to the tune of Rs.9.00 lakh i.e. the proceeds of crime in his hand and the same was used by him for his personal use, investment in Fixed Deposits and insurance.

6. This Court would first deal with statutory provisions with regard to consideration of bail petition under the P.M.L.A. Act. It would be relevant to quote Sections 2(1)(p), 3, 4, 24 and 45(1)(i) and (ii) which are as under:

> *“2(1)(p) “money-laundering” has the meaning assigned to it in section 3;*
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> *3.Offence of money-laundering.-Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.*
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> *4. Punishment for money-laundering.- Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.*
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> *24. Burden of Proof- In any proceeding relating to proceeds of crime under this Act-*
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> *(a) in the case of a person charged with the offence of money-laundering under Section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and*
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> *(b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.*
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> *45. Offences to be cognizable and non-bailable.- (I) 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 bailor on his own bond unless-*
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> *(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:

Provided that a person who is under the age of sixteen years or is a woman or sick or infirm [or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees] may be released on bail, if the Special Court so directs:

7. The PMLA Act has been enacted to prevent money laundering and to prevent and to provide for confiscation of property derived from, or involved, in money laundering and for the matters connected therewith and incidental thereto. So far Section 24 of PMLA Act regarding burden of proof is concerned, from perusal of the complaint and the material on record, it appears that the accused-petitioner has failed to disclose facts showing his non-involvement in any process or activity with respect to the proceeds of crime and has also not been able to rebut legal presumption invoked in Section 24 of the PMLA. In so far as Section 45 of PMLA is concerned, it is manifest that in order to obtain bail, the accused-petitioner is saddled with the responsibility to demonstrate before the Court that he is not *prima facie* guilty of such offence. But from the materials available on record and considering the rival submissions made on behalf of both the parties, this Court is of

the view that the accused-petitioner has not been able to show that *prima facie* he is not guilty of the offence alleged against him. In course of statement u/s 50 of the PMLA, the petitioner has also admitted that he used the bank account bearing account no. 19110100001119, NKGSB Co-operative Bank Ltd., Vile Parle(E) Branch, Mumbai of his proprietorship firm namely Red Rose P L for providing accommodation entries in lieu of commission on the transaction took place in the said account. The instant case, which is evident from the records, involves allegations pertaining to money-laundering of several crores of rupees by the accused persons. Section 45 makes the offences under P.M.L.A. to be cognizable and non-bailable. As regards the twin conditions for grant of bail contained in Section 45(1) of the PMLA, it has been held by the Hon'ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India & Ors.*** reported in ***2022 SCC OnLine SC 929*** that the underlying principles and rigours of Section 45 of the Act must come into play and without exceptions ought to be reckoned to uphold the objectives of the Act, which is a special legislation providing for stringent regulatory measures for combating the menace of money laundering.

8. Under the facts and circumstances, from perusal of

records, it appears that there is enough material on the record to show that the petitioner was actively involved in acquisition, disposal and transfer of proceeds of crime. Further from perusal of the records, it appears that the allegation made against the petitioner is grave and serious in nature. Further, it appears that accused-petitioner has direct involvement in receipt of proceeds of crime and further layering and laundering of proceeds of crime which make him liable for the offence of money laundering punishable under Section 4 of the PMLA.

9. Considering the above circumstances of the case and *prima facie* reading of the material placed on record and considering the parameters of Section 45(1) of PMLA as well as the gravity of the offence, it appears that the petitioner is involved in the alleged concealment, possession and using the properties acquired out of proceeds of crime and projected the same as tainted. As such, this Court is not inclined to grant bail to the petitioner.

10. The prayer is rejected. The trial Court is directed to expedite the Trial expeditiously. If the trial is not concluded within a period of six months from the date of receipt/production, the petitioner will have liberty to renew his prayer for bail in the Court below. However, the above

observations are only tentative in nature only for the disposal of the bail application.

(Rudra Prakash Mishra, J)

Pankaj/Rajorshi

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