IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.68008 of 2024

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

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Bimal Dalmia, Son Of Late Nagar Mal Dalmia R/o- Sarswati Apartment, Flat No. 67 And 68, S.P. Verma Road, P.S.- Kotwali, Distt.- Patna- 80001

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Deputy Director, Directorate of Enforcement, Government of India, Patna Bihar

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Ranjan- Advocate
For the State	:	Mr. Chandra Bhushan Prasad- A.P.P.
For the E.D.	:	Mr. Tuhin Shankar – Advocate Dr. K .N. Singh- Advocate

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA

ORAL ORDER

3 12-02-2025 1. Heard learned counsel for the petitioner, the learned counsel appearing on behalf of the Enforcement Directorate (ED) and the learned APP for the State.

2. The petitioner seeks bail in anticipation of his arrest in ECIR No. PTZO/7/2016 registered for the offences punishable under Sections 3, 4 and 8 (5) of the Prevention of Money Laundering Act, 2002 (PMLA) and subsequent charge sheet no.54 of 2014 for commission of offences under Sections 420 and 120B of the I.P.C. and under Section 13(1)(d) of the Prevention of Corruption Act (PC Act)

3. The case was taken up on 05.10.2024, when four weeks' time was sought by the ED for filing a counter-affidavit,

but the counter-affidavit till date has not been filed.

4. The learned counsel for the petitioner submits that the petitioner was not named in the FIR, which was instituted with respect to predicate offence in the Year 2013. It is next submitted that the ED came in picture in the Year 2016 and thereafter, an ECIR was instituted and the name of the petitioner in the case transpired in the Year 2019. It is submitted that petitioner since 2019 has cooperated in the investigation, which was carried out by the ED and the ED never felt the need of arresting the petitioner during the course of investigation. It is next submitted that thereafter, in the Year 2022, charge-sheet came to be submitted by the ED in which the name of the petitioner also figured.

5. The learned counsel for the petitioner next draws the attention of the Court to Page-103 of the anticipatory bail application to submit that with respect to the petitioner, what transpired during the course of investigation is recorded. It is submitted that ED against the petitioner has recorded that petitioner is proprietor of M/s Swatik Sales Corporation, in connivance with Binod Kumar Singh (accused no.2) and Amit Kumar Dhandhania (accused no.4) caused loss to the Government Exchequer by supplying machines, equipments etc.

on high rates in a planned manner and therefore, was involved in generation of proceeds of crime and in the process also got undue benefit to the extent of Rs.2,30,850/-. Further, during the course of investigation, it is seen that he acquired movable property in the name of his wife Jyoti Dalmia and further, it is revealed that income shown in the income return of his wife actually had its source from Bimal Dalmia i.e. petitioner. Therefore, it is evident that Bimal Dalmia knowingly assisted and is actually involved in the process of activity connected with proceeds of crime, further, he himself and through his wife is in possession of proceeds of crime and the same is being projected as untainted, therefore, is guilty of offence of money laundering under Section 3 of the Act.

6. The learned counsel for the petitioner next submits that petitioner is a businessman and he had participated in a tender floated by the Purchase Committee of the P.M.C.H. in which petitioner also participated and was declared L-1and accordingly, he supplied machines and equipments of Rs. One Crore Fifty Six Lacs. It is submitted that it absolutely does not stand to reason that if a businessman after participating in the tender process and becoming L-1, supplied equipments worth Rs. One Crore Fifty Six Lacs, then how it can be alleged that

petitioner was associated with the proceeds of crime. It is also submitted that during course of investigation, the ED has not been able to even remotely connect the petitioner with the offence except based on suspicion that he was involved in the occurrence along with Binod Kumar Singh and Amit Kumar Dhandhania. It is also submitted that the ED has literally made a mockery of the investigation by recording that the petitioner got undue benefit to the extent of Rs.2,30,850/- by supplying machines, equipments etc. on a higher rate, but then, the charge-sheet does not disclose that as to what was the rates of the equipment and what was the rate on which the petitioner supplied those equipments.

7. The learned counsel appearing on behalf of the petitioner again reiterates and submits that since the ED during the course of investigation never felt the need of arresting the petitioner whether it would be prudent for this Court to send the petitioner to jail after the charge-sheet was submitted in the Year 2022. The learned counsel for the petitioner submits that the Hon'ble Sureme 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. It is further submitted that the Hon'ble Supreme Court thus decided that once an ECIR is filed and the accused is not arrested during the course of investigation and thereafter, cognizance is taken, in that event, the ED looses its power to arrest the accused without seeking permission of the Special Court. It is further submitted that in the instant case also an FIR was instituted for the predicate offence, but then, petitioner was not implicated as an accused and later, during the course of investigation, his name transpired in the Year 2019, when ED had taken over the case for investigation under the PMLA Act and the petitioner all throughout since 2019 till filing of the charge-sheet has cooperated in the investigation and the ED never felt the need of arresting the petitioner and based on the charge-sheet, cognizance has been taken and thus, the petitioner apprehends his arrest and thus has moved this Court seeking anticipatory bail. It is also submitted that the case be disposed of in terms of order dated 16.05.2024 in Cr. Appeal No.2608 of 2024 decided by the Hon'ble Supreme Court in the case **Tarsem Lal vs. Directorate of Enforcement, Jalandhar Zonal Office.**

8. The learned counsel appearing on behalf of the ED 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 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 the person shown as an accused in the complaint i.e. charge-sheet.

9. 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 along with other Criminal Appeals and SLP.**

10. 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 Cr. Appeal No.2608 of 2024 (**Tarsem Lal vs. Directorate of Enforcement, Jalandhar Zonal Office).**

(Satyavrat Verma, J)

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