IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.52321 of 2024

Arising Out of PS. Case No.-27 Year-2023 Thana- E.C.I.R (GOVERNMENT OFFICIAL) District- Patna

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Sagar Yadav Son Of Late Babu Lal Yadav Resident Of 127a/1, Satin Sen Sarani, Near Ideal Building, Kankurgachi, P.S. Manicktala, District Kolkata, West Bengal

... ... Petitioner/s

Versus

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

... ... Opposite Party/s

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with

CRIMINAL MISCELLANEOUS No. 68151 of 2024

Arising Out of PS. Case No.-27 Year-2023 Thana- E.C.I.R (GOVERNMENT OFFICIAL) District- Patna

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Santosh Kumar S/O Shri Ashok Kumar Yadav Resident of Village- Serua, P.O.- Gawan, P.S.- Gawan, District- Giridih (Jharkhand)

... ... Petitioner/s

Versus

The Union of India through Assistant Director (PMLA), Directorate of Enforcement, Patna. Bihar

... ... Opposite Party/s

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Appearance :

(In CRIMINAL MISCELLANEOUS No. 52321 of 2024)

For the Petitioner/s	:	Mr. Ashok Chaudhary, Sr. Advocate Mr.Vishal Kumar, Advocate Mr. Akshansh Ankit, Advocate Mr. Lokesh Kumar, Advocate
For the Opposite Party/s	:	Mr. Anshay Bahadur Mathur (C.G.C.)

(In CRIMINAL MISCELLANEOUS No. 68151 of 2024)

For the Petitioner/s	:	Mr. Ram Naresh Singh, Advocate Mr. Shambhu Sharan Sharma, Advocate
For the UOI	:	Mr. Dr. K.N. Singh(A.S.G.) Mr. Manoj Kumar Singh, (E.D) Mr. Ankit Kumar Singh, J.C.

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CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY

C.A.V. ORDER

8 31-01-2025 Heard learned counsel for the petitioners and learned APP for the State.

2. The petitioners have prayed for regular bail in a case registered for the offence punishable under section 4 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as "PML Act, 2002".

3. The case of the prosecution, in brief, is that Ms. Carmel Fox, an Irish National reported a fraud activity to Dungarvan Garda Police Station on 07.12.2021 wherein she stated that she received a call from mobile no. 08339852316 identifying herself as Stephanie from Eircom Technological Service and asked about her broadband services. Stephanie further asked Ms. Carmel Fox to access her laptop through Team Viewer to allow her to research standard of broadband connection and said that she was due a refund of 250 Euro and asked her bank account details which was provided by Ms. Carmel. Ms. Carmel further stated that PTSB fraud centre queried about transaction of 950 Euro on her Visa Credit Card No. IE551PBS99073270000052 via Rewire on 07.12.2021. Ms. Carmel found a Rewire app on her phone which was not installed by her nor did she have an account on Rewire app. 950 Euro was not refunded to her. The information provided by the NCB-Ireland further revealed that the fraudster transferred an amount of 950 Euros from the credit card of Ms. Carmel Fox to

a Rewire Bank Account which was further transferred from the rewire account to HDFC Bank Account No. 50200054992391 in the name of Nitesh Kumar of Bihar India (one of the accused persons).

4. Learned counsel for the petitioners has submitted that the petitioner, namely, Sagar Yadav is the Director of the company namely M/s Scrapix Consultancy Services Pvt. Ltd. Apart from this company, this petitioner is also the Director of M/s Scrapix Capital Pvt. Ltd, M/s Scrapix Hospitality Pvt. Ltd, M/s Casanova Ralty Pvt. Ltd., M/s Casanovus Reality Pvt. Ltd., M/s Casanovus Hospitality Pvt. Ltd. and M/s Casanovus Developers Pvt. Ltd. These Companies are registered companies under the Companies Act, 2013 having their duly registered offices,(xerox copy of the Certificate of Incorporation of M/s Scrapix Consultancy Services Pvt. Ltd. is annexed herewith and marked as Annexure-1, for ready reference.) It was next submitted that the basic object of these companies were to lease out the offices/buildings with basic infrastructure along with equipment, telephonic facilities, manpower placement to the various companies or individuals. This petitioner used to let out the vacant premises on lease from other companies and after making certain modifications to the rented spaces and adding

amenities, he would subsequently sublet or rent out these premises to other business operators or individuals. By way of these arrangements, the petitioner's company used to secure commissions and rental income from the other companies to whom he used to sub-let the premises and infrastructure. It was further submitted that in course of his business, the petitioner's companies had entered into various lease agreements between his companies and others on an annual basis. He used to provide port/working station to his clients in various buildings of sector-05, salt lake area, twin tower building, Nias Building, Godrej Water- Side Building, Anderson Building, Ergo Tower Building, Shaila Tower Building, Global Building and Knowledge Hub Building. etc. It was further submitted that his company M/s Scrapix Consultancy Services Private Limited had taken a building on rent in Glohsyn Crystal building from M/s E-Solution Private Ltd vide Leave and License Agreement dated 01.12.2020 executed between M/s E- Solution Infotech Pvt. Ltd. and M/s Scrapix Consultancy Services Private Limited. Subsequently, he sub-leased the same premises to M/s Leonix Business Centre Private Limited (xerox Copy of the Leave and Licence Agreement dated 01.12.2020 is annexed herewith). It was submitted that the nature of his business may be apparent from the other lease agreements. Like the petitioner's company M/s Scrapix Consultancy Services Private Limited has entered into a Leave and Licensee Agreement dated 01.10.2023 with Chandra Bhushan Rai. Additionally, another lease and license agreement dated 01.08.2020, was made between Novartis Resources Soft Private Limited, represented by Mr. R.P. Verma and Nilam Kumari, and Scrapix Consultancy Services Private Limited at Shaila Tower. Similarly, Sagar Yadav and his companies entered into various lease agreements with different firms, offering services and amenities, It was next submitted that M/s Leconix Business Center Pvt. Ltd. used to pay a monthly rental of Rs.1,41,600/- apart from the other charges like electricity charges, water charges, maintenance charges etc. It was submitted that the primary accusation against the petitioner and his companies pertain to the proceeds of crime amounting to Rs.96,00,212/- derived from business dealings with M/s Leconix Business Centre Private Limited. This is necessary to point out here that this amount represents the revenue generated by the petitioner and his company from lease buildings and office spaces, coupled with additional services and amenities provided to other companies including M/s Leconix Business Centre Private Limited.

5. Learned counsel for the petitioners has further submitted that a milestone case has been decided by the Hon'ble Supreme Court in the case of **Benoy Babu Vs. Directorate of Enforcement** reported in **(2023) SCC Online SC1393**, **Ajay Ajit Peter Kerkar Vs. Directorate of Enforcement & Anr.** reported in **(2022 SCC Online SC 929, Ramkripal Meena Vs. Directorate of Enforcement** reported in **(2024) SCC Online SC 2276, Manish Sisodia Vs. Directorate of Enforcement** reported in **(2024) SCC Online SC 1920, Kalvakuntla Kavitha Vs. Directorate of Enforcement** reported in **(2024) SCC Online SC 1920, Prem Prakash Vs. Union of India through the Directorate of Enforcement** reported in **(2024) SCC online SC 2270 and Vijay Nair Vs. Directorate of Enforcement** reported **in (2024) Online SC 2269**.

6. Mr. Anshay Bahadur Mathur (C.G.C.), learned counsel appearing for the Enforcement Directorate vehemently, opposes the prayer for bail of the petitioners and submitted that during the course of investigation, it is revealed that M/s Carmel Fox, an Irish National had been cheated with an amount of 950 Euros (Equivalent to Rs. 84,941.40/-) only. This "Proceeds of Crime" later was transferred to Account No. 50200054992391 of M/s Leconix Business Centre Pvt. Ltd. having a registered

office in Kolkata in India as RDA remittance. Nitish Kumar and S.K. Lutfur Rehman are Directors in the company and the company was incorporated on 26.11.2020. During investigation, the statement of bank accounts of the company was obtained from the concerned bank. The bank has provided bank account statement and the total credit and debit of the account are Rs. 3.29 crores and Rs. 3.25 crores respectively. Apart from the above-mentioned credit of Rs. 84,941,40/- into the account there had been credit of Rs. 96 lakhs approximately which has also been done through Rewire account as RDA remittance. It was next submitted that Sagar Yadav during recording of his statement has admitted to be involved in the offence of Cyber Crime committed on foreign nationals and revealed the *modus operandi* for setting of fake call center and for bringing the 'Proceeds of Crime' generated in foreign remittance into India. Sagar Yadav has also admitted to arrange location/premises to set-up and operate fake call-center. It was further submitted that Tapas Paul and Suman Barman have stated during their statements dated 09.02.2024 and 11.02.2024 recorded under Section 50 of 'PMLA Act, 2002' that they have incorporated laconix business centre under instructions from Sagar Yadav.

7. After hearing the parties, the main contention of the

learned counsel for the petitioners is that the basis and genesis of this ECIR proceedings/complaint cases are begin by virtue of the fraud committed with M/s Carmel Fox. It has also been submitted that the amount which has been said to be fraudulently taken away from M/s Carmel Fox is only 950 Euros which is equivalent to Rs. 84,941.40/. It has also been argued by the learned counsel for the petitioners that a proviso has been added to section 45 of the PMLA vide an amendment of 2018 which is enforced from 19.04.2018. This proviso is given here for ready reference:-

> *"Provided that a person, who is under the age of sixteen years or is a woman or is 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 directs.*

8. For better understanding the term 'Proceeds of Crime' Sub-clause – U of Section 2 is referred :

> *(u) 'proceeds of crime' means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a* ***scheduled offence*** *or the value of any such property [or where such property is taken or held outside the country, then the property*

equivalent in value held within the country [or abroad]]

9. Explanation appended to this sub-clause is also useful for ready reference:

> *"For the removal of doubts, it is hereby clarified that 'proceeds of crime' include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence".*

10. While deciding the instant bail petition reference of Section 45 of PMLA Act is also essential which reads under:

> *45. Offences to be cognizable and non-bailable – (1) 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 bail or 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*
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> *(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;

(2) The limitation on granting of bail specified in [***] of sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail."

11. This Court agrees also with the arguments advanced by the learned Senior Counsel for the Union of India that the provision of Section 45 of the PMLA creates a condition for the grant of bail to the accused of PMLA but the observations made by the Hon'ble Supreme in the case of **Prem Prakash Vs. Union of India through the Directorate of Enforcement (in SLP (Crl.) No. 5416 of 2024)** reported in **MANU/SC/0943 of 2024** whereby the Hon'ble Supreme Court has pleased to observe that where a situation has arisen that there is no likelihood of conclusion of trial within a short span, the rigors of Section 45 of the PMLA can be suitably relaxed to afford condition liberty and keeping persons behind bars for unlimited periods of time in the hope of speedy completion of trial would deprive the fundamental right of persons under Article 21 of the Constitution of India and that prolonged incarceration before being pronounced guilty ought not to be permitted to become the punishment without trial. Relevant

paragraphs 12, 13 and 14 whereof are reproduced as under:

"12. Independently and as has been emphatically reiterated in Manish Sisodia (II) (supra) relying on Ramkripal Meena v. Enforcement Directorate (2024) 12 SCC 684 and Javed Gulam Nabi Shaikh v. State of Maharashtra, (2024) SCC Online 1693, where the accused has already been in custody for a considerable number of months and there being no likelihood of conclusion of trial within a short span, the rigours of Section 45 PMLA can be suitably relaxed to afford conditional liberty. Further, Manish Sisodia (II) (supra) reiterated the holding in Javed Gulam Nabi Sheikh (supra), that keeping persons behind the bars for unlimited periods of time in the hope of speedy completion of trial would deprive the fundamental right of persons under Article 21 of the Constitution of India and that prolonged incarceration before being pronounced guilty ought not to be permitted to become the punishment without trial.

13. In fact, Manish Sisodia [Manish Sisodia v. Enforcement Directorate, (2024) 12 SCC 660 2024 SCC OnLine SC 1920] reiterated the holding in Manish Sisodia v. CBI [Manish Sisodia v. CBI, (2024) 12 SCC 691: 2023 SCC OnLine SC 1393] wherein it was held as under: (Manish Sisodia case [Manish Sisodia V. CBI, (2024) 12 SCC 691: 2023 SCC OnLine SC 1393]. SCC paras

34-35)

"34. Detention or jail before being pronounced guilty of an offence should not become punishment without trial. If the trial gets protracted despite assurances of the prosecution, and it is clear that case will not be decided within a foreseeable time, the prayer for bail may be meritorious. While the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, murder, cases of rape, dacoity, kidnaping for ransom, mass violence, etc. Neither is this a case where 100/1000s of depositors have been defrauded. The allegations have to be established and proven.

35. The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PML Act. The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, may well be guided to exercise the power to grant bail. This would be truer where the trial would take years.

14. It is in this background that Section 45 PMLA needs to be understood and applied. Article 21 being a higher constitutional right, statutory provisions should align themselves to the said higher constitutional edict."

12. Similarly the observation made by the Hon'ble Supreme Court in the case of **V. Senthil Balaji (supra)** is also necessary to be taken care of. Paragraph 21 whereof is reproduced as under :-

"21. Hence, the existence of a scheduled offence is sine qua non for alleging the existence of proceeds of crime. A property derived or obtained, directly or indirectly, by a person as a result of the criminal activity relating to a scheduled offence constitutes proceeds of crime. The existence of proceeds of crime at the time of the trial of the offence under Section 3 of PMLA can be proved only if the scheduled offence is established in the prosecution of the scheduled offence. Therefore, even if the trial of the case under the PMLA proceeds, it cannot be finally decided unless the trial of scheduled offences concludes. In the facts of the case, there is no possibility of the trial of the scheduled offences commencing in the near future. Therefore, we see no possibility of both trials concluding within a few years."

13. Here, in the present case, the question of liberty recognized by the constitution under Article 21 and the question of curtailment of liberty by virtue of Section 45 of the PMLA is directly involved which has been well discussed and answered in the case of Prem Prakash (supra) and those observations have been followed by the different judgements by the various High Courts as well as the Hon'ble Supreme Court. Here in the present case, the complaint case arising out of ECIR/PTZO/14/2023 has already been concluded, after the investigation against all the petitioners on the basis of which Special Court has already taken cognizance on 10.11.2023 and 08.05.2024 and only trial has to be concluded about which the learned Sr. Counsel for the Union of India has specifically submitted that the trial shall be commenced and shall be concluded within 6-12 months but on the other hand, there are 20 different FIRs/cases said to be the predicate/scheduled offence. Out of 20 cases, in 13 cases investigation is still pending whereas in the rest seven cases in which cognizance has been taken, the trial has not been commenced in six cases. As such, this Court is of the firm view that there is no possibility of conclusion of the trial of predicate offence within a few years.

14. In this background that the complaint

/supplementary complaint filed by the Enforcement Directorate, investigation has been completed, charge sheets have been submitted, cognizance have been taken and there is no role of the accused persons left therein and particularly this Court is also cautious that if in future any supplementary complaint or investigation proceeds or further investigation proceeds, then the accused persons /petitioners must have to participate in the investigation and follow the Laws of Land as well as also, considering the period of custody, they cannot be indefinitely put behind bars as under trial till the conclusion of the trial of Schedule/predicate offences.

15. So far as petitioner of Cr. Misc. No. 68151 of 2024, namely, Santosh Kumar is concerned, the name of this petitioner has surfaced only on the statement of petitioner Sagar Yadav.

16. Considering the aforesaid facts and circumstances of the case and in the light of the aforesaid discussions advanced on behalf of the parties, this court is inclined to enlarge the petitioners on bail. The above named petitioners are directed to be released on bail in connection with Special Trial No. (PMLA) –12 of 2023 arising out of ECIR No. PTZO/27/2023 on furnishing bail bond of Rs.100000/- (One Lakh) on each of

them with two sureties of the like amount each to the satisfaction of learned Special Judge, PMLA cum District & Sessions Judge, Patna, subject to the following conditions:

(i) the petitioners shall appear before the learned Trial Court as and when the matter is taken up for hearing;

(ii) the petitioners shall provide their mobile number to the officers of the Directorate of Enforcement to ascertain their shereabout while they are on bail;

(iii) the petitioners shall surrender their passport in the trial court and will not leave the country without prior permission of the learned Trial Court;

(iv) the petitioners shall not try to contact, threaten or influence any of the witnesses of this case, and the petitioners shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses;

(v) the trial Court will be entitled to cancel the bail in case the petitioners deliberately delay the trial of the present case.

(Ashok Kumar Pandey, J)

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