

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.33232 of 2023

Arising Out of PS. Case No.-5 Year-2016 Thana- E.C.I.R (GOVERNMENT OFFICIAL)

District- Patna

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Rajesh Kumar Agarwal @ Rajesh Kumar Agrawal Son Of Late Govind Prasad Agrawal R/O-
K.K. Sahu Lane, Kedar Nath Road, Madhusudan Garden, P.S.-Muzaffarpur Town, Distt.-
Muzaffarpur

... .. Petitioner/s

Versus

The Union Of India Through The Assistant Director (PMLA), Directorate Of Enforcement
Government Of India , 1st Floor, Chandpura Place, Bank Road, West Gandhi Maidan, Patna.

... .. Opposite Party/s

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Acts/Sections/Rules:

- IPC - Sections 419, 420, 467, 468, 469, 471 and 120(B)

Cases referred:

- Tarsem Lal versus Directorate of Enforcement, reported in 2024 (3) PLJR (SC) 119
- Vijay Ketan Sahu Vs. Enforcement Directorate bearing SLP (Cr.) No. 8325 of 2024

Application - for grant of anticipatory bail - under Section 4 of PMLA, 2002.

Allegation was regarding misutilization of the Bank account of his brother and his firm by the Bank Officials as huge cash amount was deposited and transferred to another accounts without their knowledge.

Held - 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 and other authorities named in Section 19 of the PMLA cannot exercise the power of arrest of the accused shown in the complaint. - 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. (Para 5)

Petition is allowed (Para 9)

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Appearance :

For the Petitioner/s : Mr. Vishal Kumar, Adv.
Mr. Lokesh Kumar, Adv.
Ms. Jaya Sonam, Adv.
Mr. Vikash Khanna, Adv.

For the Opposite Party/s : Dr. Krishna Nandan Singh (ASG)
Mr. Tuhin Shankar, Adv.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT
Date : 17-09-2024

This is an application for grant of anticipatory bail to the petitioner in connection with Special Trial No. (PMLA) 02 of 2018 arising out of ECIR No. PTZO/05/2016 dated 18.07.2018 instituted for offences punishable under Section 4 of the Prevention of Money Laundering Act, 2002 (for short “PMLA”).

2. Short fact of the case is that one Gaya Civil Line P.S. Case No. 339 of 2016 was instituted on the complaint of one Sri Shashi Kumar alleging regarding misutilization of the Bank Account of his brother and his firm by the Bank Officials as huge



cash amount was deposited and transferred to another accounts without their knowledge. Similarly, an F.I.R., vide Gaya P.S. Case No. 340 of 2016, was instituted by one Sri Rajesh Kumar regarding misutilization of his and his wife's Bank Account by the Bank Officials as huge cash amount was deposited and transferred to another accounts without their knowledge. The aforesaid FIRs were registered for the offences punishable under Sections 419, 420, 467, 468, 469, 471 and 120(B) of the Indian Penal Code. Thereafter, on the basis of letter of Superintendent of Police, Economic Offences Unit, Patna, ECIR No. PTZO/05/2016 dated 26.12.2016 in connection with aforesaid two FIRs. was registered and investigation was initiated.

3. From perusal of account statement of M/s Shiva Agro Enterprises (firm of the Informant namely Shashi Kumar of Gaya Civil Line P.S. Case No. 339 of 2016), it revealed that Rs. 86,00,000/- was deposited in cash on 12.11.2016 and an amount of Rs. 76,20,000/- was transferred in the Bank Account of M/s Maa Tara Agency on 12.11.2016 itself and from the account statement of the bank account of Sri Rajnish Kumar (brother of the Informant namely Shashi Kumar of Gaya Civil Line P.S. Case No. 339 of 2016), it revealed that Rs. 86,00,000/- was deposited in cash on 12.11.2016 and Rs. 70,00,000/- was transferred in the



bank account of M/s Maa Tara Agency on 12.11.2016 itself. On aforesaid facts, it is alleged that an amount of **Rs. 146.20 Lacs** alleged to be proceeds of crime was transferred in the bank account of M/s Maa Tara Agency, Muzaffarpur and since petitioner is proprietor of the agency, summon under Section 50 of the PMLA was issued to him.

4. Learned counsel appearing on behalf of petitioner submits that petitioner has been falsely implicated in this case. He submits that the petitioner is engaged in the business of sale of sugar and in course of same, he negotiated for purchase of one rack of sugar in the month of October 2016 vide Provisional Sale Contract dated 27.10.2016, which was finalized on 03.11.2016. The said rack reached at Fatuha on 14.11.2016. One Pawan Kumar Jain and Chakresh Jain approached him to purchase 8200 bags of sugar, each bag containing 50 Kg. of sugar, at the rate of Rs. 3810/- per quintal on 11.11.2016 and it was promised by said Pawan Kumar Jain and Chakresh Jain that payment would be made to the petitioner on 12.11.2016 in two parts - vide Rs. 76.20 Lacs and Rs. 70.00 Lacs through RTGS. When the petitioner learnt that the amounts were deposited from two different bank accounts not belonging to Sri Pawan Kumar Jain and Sri Chakresh Jain, the



petitioner after writing letters to them got instituted an FIR bearing Muzaffarpur Town P.S. Case No. 134 of 2017 dated 01.03.2017.

5. Lastly, learned counsel for the petitioner submits that this case 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 and 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 petitioner is named in the F.I.R. with specific accusation that huge amount of **Rs. 146.20 Lacs**, alleged to be proceeds of crime, was transferred in the bank account of his firm. He, being proprietor of M/s Maa Tara Agency, in course of statement dated 07.07.2017 under section 50 of the PMLA, 2002 stated following:

“(i) He started business in the name of M/s Maa Tara Agency in 2009 for purchase and sale of sugar.

(ii) He did not know Shri Rajnish Kumar and the Director of M/s Shiva Agro Enterprises.

(iii) Rs. 70,00,000/- and Rs. 76,20,000/- were credited in A/c No. 35810387168 held with State Bank of India Mithanpura Branch, Muzaffarpur in the name of his firm M/s Maa Tara Agency from Bank Account of Shri Rajnish Kumar and Mis Shiva Agro Enterprises respectively.



(iv) He issued invoice and prepared party wise ledger in the name of Shri Rajnish Kumar and M/s Shiva Textiles because Shri Pawan Jain had arranged the payments through these accounts and asked him to prepare the invoice and ledger in the name of Shri Rajnish Kumar and M/s Shiva Agro Enterprises.

(v) When he knew that his bank account held with SBI, Muzaffarpur was freezed, he filed an FIR against Pawan Kumar Jain and Mintu Jain (son of Pawan Kumar Jain) for making advance payment from third party account in respect of placing order of sugar by him.

(vi) Investigation revealed that the FIR No. 134/17 dated 01.03.2017 was filed by the petitioner namely Rajesh Kumar Agarwal much after the initiation of investigation under PMLA on 26.12.2016.

(vii) He committed mistake in accepting deposit from third party.”

7. Learned counsel for the Enforcement Directorate further submits that on above-mentioned facts and circumstances of the case, it is clear that the proceeds of crime have been layered and merged into accounts of M/s Maa Tara Agency. Accordingly, properties of Shri Rajesh Kumar Agarwal, proprietor of M/s Maa Tara Agency, Muzaffarpur, found to be involved in money laundering and the same has been attached, vide Provisional



Attachment Order No. 02/2017 dated 18.09.2017 and O.C. No. 826/2017 has been filed for adjudication which has been confirmed by the learned Adjudicating Authority, vide order dated 17.01.2018. Accordingly, he submits that after considering the entire facts and circumstances of the present case, the learned Session Judge/Special Judge (PMLA), Patna has rightly rejected the Anticipatory Bail petition filed on behalf of the Petitioner, vide order dated 27.01.2023 and this Court should refrain from interfering with the said order.

8. Having heard the submissions as 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 and accordingly, the order impugned i.e. order dated 27.01.2023 passed by learned Sessions Judge /Special Judge (PMLA), Patna in Special Trial No. (PMLA) 02 of 2018 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	AFR
CAV DATE	N/A
Uploading Date	20.09.2024
Transmission Date	20.09.2024

