

IN THE HIGH COURT OF JUDICATURE AT PATNA

Amit Kumar @ Bachcha Rai @ Amit Kumar Nirala

vs.

Union Of India

Criminal Miscellaneous Number 59613 of 2023

5th October, 2023

(Hon'ble Mr. Justice Rajiv Roy)

Issue for Consideration

Whether petitioner entitled for Anticipatory Bail after defying Order of Hon'ble Apex Court?

Headnotes

Code of Criminal Procedure, 1973—Sections 437 and 439—Regular Bail—allegation on petitioner that he amassed property in his own name and his family name—Anticipatory Bail was rejected by Hon'ble High Court, then petitioner moved to Hon'ble Apex Court there also his Anticipatory bail was rejected with liberty to file Regular bail within four weeks on medical condition—petitioner not moved any application for four years—petitioner filed Miscellaneous Application with a prayer to represent himself through a counsel in the proceeding; and further wanted to join proceeding virtually—prayer was allowed by Hon'ble Apex Court—his Bail application was also rejected by Trial Court.

Held: petitioner is playing with Hon'ble Apex Court Order—petitioner is showing thumb to all the Courts where he is making applications to have an order of his choice—case does not come in the category of sympathetic consideration—bail rejected.

(Paras 3, 7, 15, 18, 20, 22)

Case Law Cited

NONE

List of Acts

Code of Criminal Procedure, 1973; Prevention of Money Laundering Act, 2002; Indian Penal Code 1860; Prevention of Corruption Act, 1988.

List of Keywords

Regular Bail, Anticipatory Bail, sympathetic consideration.

Case Arising From

From Special Trial No. (PMLA) 08 of 2018 arising out of ECIR No. PT20/04/2017 under Section 4 of the PMLA, 2002.

Appearances for Parties

For the Petitioner: Mr. Hemant Kumar, Advocate.

For the Opposite Parties: Dr. K. N. Singh (A.S.G) Sr. Advocate; Mr. Manoj Kumar Singh, PMLA; Mr. Ankit Kumar Singh, Advocate.

Headnotes Prepared by: Abhas Chandra, Advocate.

Judgment/Order of the Hon'ble Patna High Court

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59613 of 2023**

Arising Out of PS. Case No.-4 Year-2017 Thana- GOVERNMENT OFFICIAL COMP.
District- Patna

Amit Kumar @ Bachcha Rai @ Amit Kumar Nirala Son Of Rajdeo Roy R/O-
Kiratpur Rajaram, P.S. And P.O.-Bhagwanpur, Distt.-VAISHALI

... .. Petitioner/s

Versus

Union Of India Through Anish Kumar, Assistant Director, (pmla), Directorate
Of Enforcement 1st Floor, Chandpura Palace, Bank Road, West Gandhi
Maidan, Patna-800001

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Hemant Kumar, Advocate
For the Opposite Party/s : Dr.K.N.Singh(A.S.G) Sr. Advocate
Mr. Manoj Kumar Singh, PMLA
Mr. Ankit Kumar Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
Date : 05-10-2023**

Heard Mr. Hemant Kumar, learned counsel for the
petitioner and Mr. Manoj Kumar Singh, learned counsel
appearing for the PMLA.

2. The present bail application has been filed in
connection with Special Trial No. (PMLA) 08 of 2018 arising
out of ECIR No. PT20/04/2017 under section 4 of the PMLA
2002.

3. As per the prosecution story, the Assistant
Director (PMLA), Directorate of Enforcement, Patna filed
complaint under section 45 of Prevention of Money



Laundrying Act, 2002 (henceforth for short 'the PMLA Act', 2002) for the commission of the offence under section 3 punishable under section 4 of 'the PMLA' Act in connection with the Kotwali P.S. Case No. 279 of 2016 in which charge-sheet was submitted under sections 409, 420, 465, 468, 471, 120(B), 212, 188, 201 of the Indian Penal Code and sections 8, 9, 13 (1) (c) (d) (e) read with Section 13(2) of the Prevention of Corruption Act, 1988.

The allegation is of amassing of property worth Rs. 1, 99, 11, 000/- in his name as well as in the names of his family members.

4. This case has chequered history. The petitioner's journey of filing of anticipatory bail application started in the year 2019 when he preferred **Cr. Misc. No. 22206 of 2019**. After hearing the parties and perusing the record, the Patna High Court (Hon'ble Mr. Justice Vinod Kumar Sinha, as his Lordship then was), taking into account the kind of allegation that was there against the petitioner rejected, the same vide an order dated **13.5.2019**.

5. Aggrieved, the petitioner moved before the Hon'ble Apex Court in **SLP (Crl) No. 6483 of 2019**. It was heard and disposed of on **1.8.2019** and it is important to



incorporate the relevant part of the order which read as follows:

"Learned counsel also seeks to rely on the medical reports of the petitioner to contend that there is no improvement in his medical condition or rather there is a deterioration.

It is also contention of the petitioner that the case in question arises from the same predicated offence in respect of which the investigation is complete.

On hearing learned Senior counsel for the petitioner, we are of the view that the aforesaid aspects would be considered in the case of the regular bail and would not entitled the petitioner to anticipatory bail and that is the reason we are not not inclined to interfere with the impugned order.



We are, thus, of the view that the petitioner should move for regular bail and if such application is moved, the same would be considered expeditiously.

In view of the medical conditions of the petitioner, we consider it appropriate to give a breather to the petitioner of two weeks so that the application can be moved by the petitioner and we expect the Court concerned to examine the application within that period of time. It will be open to the Court considering the matter to extend this protection in case so required.

The special leave petition is disposed of with the aforesaid directions.

Pending applications stand disposed of".

6. From the order passed by the Hon'ble Apex



Court on 13.5.2019, it is clear that while extending interim protection for two weeks, the petitioner was asked to move in bail. Instead, the petitioner on his own decided to sit over the said direction of the Hon'ble Apex Court for the next four years.

7. Once again, in the year 2023, he chose to move before the Hon'ble apex Court vide **Miscellaneous Application No. 481 of 2023** in **SLP (Crl) No. 6483 of 2019** with a prayer to allow him to represent through a counsel in the proceeding and further wanted to join it virtually. The same was allowed on **6.4.2023**.

8. Subsequently, the matter was taken up on **28.4.2023** when learned Additional Solicitor General appearing for the Union of India pointed out that the petitioner was supposed to apply for regular bail in terms of first order dated 1.8.2019 of the Hon'ble Apex Court. However, instead of abiding by the order, he actually is seeking extension of anticipatory bail on medical ground. Taking into account the aforesaid submission, the Hon'ble Apex Court passed the following order:

***"Learned ASG rightly points out
that the petitioner had to apply***



for regular bail and in terms of order dated 01.08.2019, it was observed so. This was in turn based on the medical condition of the petitioner.

What is happening is that the petitioner is seeking extension of anticipatory bail order on medical condition.

On our query, learned counsel for the petitioner submits that he will apply for regular bail within a week with all the medical records and the trial Court is expected to consider the aspects of the medical record inter alia while determining whether the petitioner should be granted bail.

The trial Court will endeavour to decide the application as early as feasible and in the meantime



*the interim arrangement arrived
at by order dated 06.04.2023
would continue to enure for the
benefit of the petitioner.*

*If the petitioner does not apply
for regular bail within a week,
the order would automatically
stands vacated.*

*IA No. 57582/2023 accordingly
stands disposed of.*

*MA also stands disposed of
(Annexure-5/A).*

9. From the aforesaid facts as also the orders of the Hon'ble Apex Court, it is very clear to this Court that the petitioner was supposed to move before the concerned Court in bail. In other words, he should have filed surrender cum bail application before the PMLA Court within a week in compliance of the order dated 28.4.2023 of the Hon'ble Apex Court.

10. Instead, he once again chose to appear virtually before the learned Special Judge, Patna in Special Trial (PMLA) No. 08 of 2018. The matter was taken up on



18.5.2023 and after incorporating the entire facts as also allowing the petitioner to appear virtually, the learned Special Judge rejected the petition and it is important to incorporate the relevant paragraph which read as follow:

"Petitioner-accused, Amit Kumar @ Bachcha Rai @ Amit Kumar Nirala appeared virtually and submitted that he is not well, as such he is not appearing physically in the court and if he will be granted regular bail and any condition will be imposed then he is ready to comply with the condition.

There is no doubt that in regular bail the accused is bound to appear before the court but considering the above said facts, I think it proper, legal and judicious to dispose of the petition filed on behalf of the petitioner accused, Amit Kumar @ Bachcha Rai @ Amir Kumar Nirala on whose behalf regular bail petition has been filed and he is ill, which appears from the medical



prescription filed by him. However, the allegation against the petitioner-accused is very serious in nature that he acquired to the tune of Rs.1,99.11,000/- and invested the same in the form of movable and immovable property in his name as well as his wife, namely Sangeeta Rai in between in the year 2010-2015 through proceeds of the crime. Therefore, prima facie it appears that petitioner-accused, Amit Kumar @ Bachcha Rai @ Amit Kumar Nirala has committed the offence of money laundering as defined under Section 3 of the Prevention of Money Laundering Act and punishable under Section 4 of the Prevention of Money Laundering Act 2002.

There is no doubt that on behalf of petitioner-accused Amit Kumar @ Bachcha Rai @ Amit Kumar Nirala medical prescription has been filed



which shows that he is ill. But in the present case, there are material on record against the petitioner-accused. It is also not disputed that whomever perpetrated this grave economic offence deserves to be deal with sternly under law. Moreover, Section 24 of the Act provides than "Unless the contrary is proved, the Authority or the court shall presume that proceeds of crime are involved in money laundering and burden to prove that the proceeds of crime are not involved, lies on the unused

Considering all the above said facts of the case, basically the allegation as made in para 1 to 19 of the complain petition i.e. purchase of property from the proceeds of the crime and projecting it as untainted property by Amit Kumar @ Bachcha Rai @ Amit Kumar Nirala I am of the opinion that petitioner-



accused, Amit Kumar @ Bachcha Rai @ Amit Kumar Nirala does not deserve the privilege of bail and as such I am not inclined to allow the bail petition dated 03.05.2023 filed on behalf of petitioner-accused, Amit Kumar @ Bachcha Rai @ Amit Kumar Nirala. It is, therefore, ordered that this bail petition filed on behalf of the petitioner-accused, namely: Amit Kumar @ Bachcha Rai @ Amit Kumar Nirala is, hereby rejected.

11. Still aggrieved, the present petition has been preferred under sections 439 and 440 of the Cr.P.C., 1973. It is important to note here that the petitioner is not in judicial custody. Thus, the journey of bail application(s) which started with the rejection of first anticipatory bail on 13.5.2019 in Cr. Misc. No. 22206 of 2019 has come full circle.

12. Learned counsel appearing for the petitioner submits that to his understanding the direction of the Hon'ble apex Court was to file regular bail which has been filed before the learned Special Judge and as the word surrender



was missing in the order, he appeared virtually.

13. As stated above, after the rejection of his petition before the learned Special Judge, here also he has used the word grant of bail which is actually an anticipatory bail application in the garb of bail petition.

14. Mr. Manoj Kumar Singh, learned counsel appearing for the Union of India vehemently opposed the prayer stating that the petitioner is playing with the law of the land since May, 2019 when his anticipatory bail was rejected. He has virtually chosen to defy the direction of the Hon'ble Apex Court despite the long rope extended to him.

15. Mr. Singh submits that after rejection of his anticipatory bail in 2019, he moved before the Hon'ble Apex Court and a clear direction was given to him on 1.8.2019 to seek bail while granting interim protection. But he defied the order of the Hon'ble Apex Court for the next four years before once again he filed Miscellaneous Application No. 481 of 2023. It was considered by the Hon'ble Supreme Court and once again he was allowed to surrender.

16. He has taken this Court to the last order dated 28.4.2023 where the learned ASG pointed out that in the garb of medical condition, he is actually seeking extension of



anticipatory bail. The Hon'ble Apex Court accordingly made it clear that in case he does not seek bail within a week, the order would automatically stand vacated.

17. The submission of learned counsel for the PMLA that the petitioner once again defied the order and chose not to surrender rather requested the PMLA Court to allow him to appear virtually which the Court acceded to and thereafter having reasoned out the facts of the case rejected his bail application.

18. Even then, he chose not to surrender and make out a case for his bail on medical ground and in that background no relief can be granted.

19. Having heard the parties and after perusing the records, this Court finds force in the submissions put forward by the learned counsel for the PMLA, Mr. Manoj Kumar Singh. The order dated 28.4.2023 of the Hon'ble Apex Court was very clear. He was to apply for bail within a week along with medical reports which was to be taken into account by the learned Trial Court and an order was to be passed thereafter.

20. Instead, under ill advise, he is showing his thumb to all the Courts where he is making applications with



the sole purpose to have an order of his choice. Thus his case does not come in the category of sympathetic consideration.

21. It is surprising that despite the petitioner defying the order of Hon'ble Apex Court and the interim protection granted to him lapsed a week after 28.4.2023 still the prosecuting Agency has taken no steps to arrest him. It is high time they act in the matter so that the trial is taken to its logical conclusion.

22. The petition stands rejected.

(Rajiv Roy, J)

Ravi/-

AFR/NAFR	AFR
CAV DATE	
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