IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11207 of 2024

Arising Out of PS. Case No.-14 Year-2023 Thana- E.C.I.R (GOVERNMENT OFFICIAL) District- Patna

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Radha Charan Shah @ Radha Charan Sah son of Late Haribans Sah Resident of Anaith, Mathiya, Ara Sasaram Road, P.S. Nawada District- Bhojpur, Bihar.

... ... Petitioner/s

Versus

1. The Union Of India through the Assistant Director, Patna Zonal Office, Enforcement Directorate Bank Road Patna, Bihar
2. The State of Bihar through the Secretary Department of Home, Govt. of Bihar, Patna Bihar

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. S.D. Sanjay, Sr. Advocate
Mr. Mohit Agrawal, Advocate
Mr.Vishal Kumar, Advocate
Mr. Lokesh Kumar, Advocate
For the Opposite Party/s : Mr.Dr. K.N. Singh, Sr. Advocate
Mr. Manoj Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA

ORAL ORDER

2 09-02-2024 Heard Mr. S.D. Sanjay, learned Sr. counsel for the petitioner and Mr. K.N. Singh, learned Additional Solicitor General assisted by Mr. Manoj Kumar Singh and learned cousnel for Opposite Party No.2.

2. Learned senior counsel for the petitioner submits that the present application has been filed seeking quashing of the order dated 2.2.2024 passed by Special Trial (PMLA) Case No. 08 of 2023, arising out of ECIR No.PTZO/14/2023 dated 15.03.2023 by the Court of learned Special Judge, PMLA-cum-District & Sessions Judge, Patna whereby the application dated

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23.01.2024 seeking permission to attend the sitting of Bihar Vidhan Parishad on 12.02.2024 at 11.00 A.M. and from judicial custody under police escort has been rejected.

3. The learned Additional Solicitor General, Government of India, Patna High Court at the outset seeks four weeks time for filing a counter affidavit. It is further submitted that there is absolutely no infirmity in the order impugned as learned Special Judge, PMLA-cum-District & Session Judge, Patna while dismissing the application of the petitioner dated 23.01.2024 seeking permission to attend the sittings of Bihar Vidhsan Parishad under police protection while in judicial custody has taken note of the entire facts of the case in its correct perspective. It is also submitted that the petitioner has been involved in a case relating to money laundering. It is further submitted that the seriousness of the offence can well be imagined from the fact that even chargesheet have been submitted in the case based on which the ECIR has been instituted. It is next submitted that the Hon'ble Supreme Court in the case of **Anil Basanrao Deshmukh Vs. Directorate of Enforcement and another** Special Leave to Appeal Cr. No. 5825 of 2022, had rejected the application filed on behalf of the petitioners therein who were seeking permission to participate in

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the proceedings of the election to the Maharashtra Legislative Council keeping in view the fact that the constitutional validity of Section 62(5) of the R.P. Act, 1951 was upheld by the Hon'ble Supreme Court in the case of **Ankul Chandra Pradhan, Advocate Sureme Court Vs, Union of India and others (1997)6 SCC 1**. It is further submitted that Section 62(5) of R.P. Act imposes a complete ban on the right to vote on a person at any election in the circumstances contemplated under Section 62(5) of the Act.

4. The learned Addl. Solicitor General next submits that petitioner in the present case being an MLC has absolutely no role in the Session which is commencing from 12.02.2024, as the Government would be seeking vote of confidence and the petitioner being an MLC cannot participate in the election, as an MLC cannot vote when the Government is seeking vote of confidence for electing the Chief Minister. It is next submitted that the present application is nothing but a ploy on the part of the petitioner to be released. The learned Addl. Solicitor General next submits that the present application has been filed only with a view that the petitioner be allowed to participate in the proceeding of the Sessions of the Assembly which is commencing from 12.02.2024 so that he can manage the

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witnesses of the case. It is also submitted that when no person in lawful judicial custody is allowed to vote in any election, what useful purpose would be served by allowing the petitioner to participate in the Sessions of the Legislative Assembly when petitioner has absolutely no role in the Sessions which commences from 12.02.2024 where the Government would be seeking vote of confidence. The learned Addl. Solicitor General submits that a peculiar submission has been made on behalf of the petitioner by the learned senior counsel that the petitioner be allowed to participate in the sessions which commences from 12.02.2024 for giving moral support in the vote of confidence. It is submitted that when a person is not allowed to participate in any election while in judicial custody then on what basis, the person be allowed to participate in the proceeding of the assembly session for giving moral support. At this stage, the learned senior counsel appearing on behalf of the petitioner relies on a Judgment of the Hon'ble Supreme Court in the case of **Nalin Soren Vs. State of Jharkhand Special Leave to Appeal (Cr.) No.5859 of 2013** to submit that Nalin Soren was permitted to participate in the vote of confidence in the Jharkhand Legislative Assembly which was to be taken up on 18.07.2013.

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5. Learned Addl. Solicitor General vehemently rebuts the submissions made by learned senior counsel for the petitioner and submits that placing reliance on an order of the Hon'ble Supreme Court which has no bearing on the adjudication of the present case is only an attempt to waste the time of the Court. It is next submits that Nalin Soren was an MLA and in the peculiar facts of the case, he was granted permission by the Hon'ble Supreme Court but then in the present case, petitioner is an MLC and he has absolutely no role to be present in the Legislative Assembly when the Government is seeking vote of confidence on 12.02.2024. It is also submitted at the cost of repetition that the Hon'ble Supreme Court in the case of **Anil Basanrao Deshmukh Vs. Director of Enforcement and another Special Leave to Appeal Cr. No.5825 of 2022** has taken a different view.

6. The learned Addl. Solicitor General thus seeks four weeks' time to file counter affidavit.

7. Put up this case on 18.03.2024.

(Satyavrat Verma, J)

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