IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17738 of 2024

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

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Kanhaiya Prasad

... ... Petitioner/s

Versus

The Union of India through the Assistant Director, Zonal Office, Enforcement Directorate, Bank Roa

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. S.D. Sanjay, Sr. Adv.
: Mr. Vishal Kumar, Adv.
For the Opposite Party/s : Mr. Dr. K.N. Singh (ASG)
: Mr. Tuhin Shankar, CGC
: Mr. Manoj Kumar Singh, CGC

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL ORDER

2 14-03-2024 Learned senior counsel, Mr. S.D. Sanjay for the petitioner and learned senior counsel Mr. Dr. K.N. Singh for the Union of India (Enforcement Directorate) are present.

2. Learned senior counsel for the petitioner submits that the present bail application has been filed for grant of regular bail in connection with Special Trial (PMLA) Case No.08 of 2023 arising out of ECIR No. PTZO/14/2023 dated 15.03.2023 lodged under Section 4 of the Prevention of Money Laundering Act, 2002 pending in the court of learned Special Judge, PMLA -cum- District & Sessions Judge, Patna.

3. As per the prosecution case, the petitioner is one of the accused of the above named case i.e., Special Trial (PMLA)

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Case No.08 of 2023 (Accused No.6) against whom there is specific allegation has made in paragraph 9.7 whose brief summary of result of investigation under PMLA against him is as follows:-

> *"9.7 Brief summary of result of investigation under PMLA against Kanhaiya Prasad S/o Radha Charan Sah: -*
>
> *ii) His father Radha Charan Sah is a syndicate member of sale of sand of M/s Broadson Commodities Pvt Ltd.*
>
> *iii) During the search of Income tax department at the premises of his father Radha Charan Sah, a document related to transactions of M/s Broad Son Commodities Private Limited was recovered from Radha Charan Sah's Samsung - S21 Mobile phone (marked as PD-06, Page No. 72) wherein it was mentioned that "seth ji" received Rs. 5 Crore. Radha Charan Sah in his statement dated 30.08.2023 recorded under Section 50 of PMLA 2002 stated that he is not a syndicate member in M/s Broad Son Commodities Private Limited and never invested any money in the said company. However, he is known as "Sethji" and his son Kanhaiya Prasad has invested some money in M/s Broad Son Commodities Private Limited using his name and he would give more details about it.*
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> *iv) Statement of Kanhaiya Prasad was recorded under Section 50 of PMLA, 2002. He in his statement dated 04.09.2023 stated that he has invested money in*

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M/s Broad Son Commodities Private Limited in the name of his father for brief period of time and he has received the money back later. However, regarding the document related to transactions of M/s Broad Son Commodities Private Limited recovered from Radha Charan Sah's Samsung - S21 Mobile phone wherein it was mentioned that "seth ji" received Rs. 5 Crore, he stated that he is not aware of the transaction and his father would give more details about it.

v) During the statement of Kanhaiya Prasad 01.09.2023 tendered under Section 50 (3) of PMLA he was shown his own statement dated 23.05.2023 recorded before Income Tax which was received to this Directorate vide ACIT Central Circle-3, Patna's letter No. ACIT/Pat/CC-3/ BroadsonCommodities/2023-24/304 dated 06.07.2023 [Annexure A-43, marked and enclosed]; wherein he was stated that, he paid Rs. 33,42,56,434/- to Intercontinental Resort Pvt. Ltd in the year 2020. Out of this Rs. 33,42,56,434/-; Rs. 20,92,81,434/- was paid from Banking channel while Rs. 11,90,00,000/- were paid in cash. He also stated that he is disclosing the said Rs. 11,90,00,000/- as his income. However, in his statement dated 01.09.2023 recorded under Section 50 of PMLA, 2002 he stated that, the amount Rs. 11,90,00,000/- cash was spent by him in the maintenance of the said resort.

vi) However, a WhatsApp conversation was retrieved from the mobile phone of Kanhaiya Prasad which was seized during ED search at his premises. In the said WhatsApp conversation one Vivek Sikra has

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exchanged photos of 10 Rs./1 Re. notes to Kanhaiya Prasad along with the details of cash transfer amounting to Rs. 11,90,00,000/- on different dates during March 2020 to February 2021 and other cheque transactions worth Rs. 19,11,68,000/-. After confrontation of the said WhatsApp conversation, Kanhaiya Prasad in his statement dated 04.09.2023 recorded under Section 50 of the PMLA, 2002 stated that Vivek Sikra is the son of owner of Intercontinental Resort Pvt. Ltd from whom the said resort was purchased. The said resort in Manali was purchased at the cost of Rs. 33 Crore out of which approximately Rs. 22 Crore were paid by banking channel and Rs. 11.90 Crore were paid in cash through hawala agent.

vii) From the analysis of documents seized from Hotel The Regal, Arrah (Page 51-52, HTR-20) which were received from Income Tax department vide letter dated 20.07.2023 [Annexure A-44, marked and enclosed], it is revealed that, resort in Manali was purchased for Rs. 20,92,81,434/- which was sent by banking channel to different persons and Rs. 11,90,00,000/- cash.

viii) During the course of investigation, it is revealed that, Kanhaiya Prasad's wife Smt. Reena Devi is ext. member, his father Radha Charan Sah is President & his mother Sharda Devi is ext. member in Kamla Aggarwal Educational Society, Ghaziabad. The society runs a school named MSD World School in Gaziabad which was constructed in approx. Rs. 5,36,85,809/- cash. Radha Charan San in his statement recorded under Section 50 of PMLA, 2002 stated that Kanhaiya Prasad

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can give details about the said transactions. Kanhaiya Prasad in his statement stated that he has disclosed the said amount as his income before Income Tax department and it is from the combined income of his joint family. Kanhaiya Prasad could not provide the true source of this Rs. 5,36,85,809/- cash spent on the construction of MSD World School run by their society.

ix) Rs. 2,80,00,000/- were deposited through 140 persons (Rs. 2,00,000/- each) in the Bank Account of Ganinath Ventures LLP in the guise of making them individual partners in Ganinath Ventures LLP. Satendra Kumar and Kanhaiya Prasad are designated partners in Ganinath Ventures LLP. Kanhaiya Prasad being the Director of this LLP failed to provide any details about these 140 persons and about the said LLP.

(x) Statement of Basuki Nath Prasad was recorded under Section 50 of PMLA, 2002. He in his statement dated 16.10.2023 stated that he is one of the directors of Intercontinental Resorts Pvt Ltd Manali and is also associated with Kamla Agarwal Chariatable Trust but he had not active participation in its business. His brother Kanhaiya Prasad mainly looks after the work related to resort in Manali and MSD World School in Gaziabad operated by Kamla Agarwal Charitable Trust. Shri Kanhaiya Prasad had made transaction of Rs.11.90 crore cash for the purchase of resort in Manali and Rs. 5.36 crore cash for construction of MSD World School run by Kamla Agarwal Chariatable Trust.

xi) Statement of Satendra Kumar was recorded under Section 50 of PMLA, 2002. He in his statement

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dated 17.10.2023 stated that he is one of the directors of M/s Intercontinental Resort, Manali and partner in Ganinath Ventures LLP in name only. All transactions and management related works of both entities is controlled by Kanhaiya Prasad and all transactions related to construction of MSD World School were done by Kanhaiya Prasad and Dr. Ashok Kumar together. Shri Kanhaiya Prasad had made transaction of Rs. 11.90 crore cash for the purchase of resort in Manali and Rs. 5.36 crore cash for construction of MSD World School run by Kamla Agarwal Charitable Trust.

Xii. Kanhaiya Prasad is actually involved in the process of concealing and possession of the proceeds of crime amounting to Rs.20,06,85,809/- by using it for carrying out renovation and maintenance work at a resort in Manali, for construction work of the school owned by his family owned society and by investing it through third parties in LLP. He handled the said proceed of crime and transferred it using hawala network for purchasing the resort. He knowingly layered and laundered the proceeds of crime generated by his father by illegal sale of sand through M/s Broadson Commodities Pvt. Ltd. He disclosed this Rs. 20,06,85,809/- as his income before Income Tax department, however he tried to derail the investigation by not stating the true source of this Rs. 20,06,85,809/-.

xiii) Shri Kanhaiya Prasad in his statement before Income Tax Department as well as before this Directorate has accepted that the said Rs. 17.26 Crore (Rs. 11.90 Crore + Rs. 5.36 Cr) as his income. He

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claimed that Rs. 11.90 Crore has been generated by him by inflating invoices of his other companies. However, he has failed to produce any documentary proof regarding this. He also failed to provide any details about the 140 partners in LLP. Therefore, it is crystal clear that the true source of this huge cash of Rs. 20.06 Crore (Rs. 11.90 Cr + Rs. 5.36 Cr + Rs. 2.80 Cr) is nothing but Proceeds of Crime generated by Radha Charan Sah being a syndicate member by illegal sale of sand through M/s. Broad Son Commodities Private Limited."

4. Learned senior counsel for the petitioner further submits that the petitioner is innocent and has committed no offence. He submits that the petitioner has been made accused for an offence which is not schedule. He further submits that the said complaint has been filed on 09.11.2023 after completion of investigation. He submits that the petitioner has already filed a letter on 24.05.2023 before the Assistant Director of Income Tax in which he has clearly stated that a search and seizure operation under section 132(1) of the Income Tax Act, 1961 was carried out and in the said letter, he offered additional income of Rs.18 crores for the year covered under the search and payment of Rs.11.90 crores in cash was made by him.

5. Counsel further submits that in the present case, the violation of income tax has been made by way of evasion of

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income tax in the light of section 276 of the Act. He further submits that evasion of income tax and the wrong under income tax does not come within the purview of the schedule offences as mentioned in the Prevention of Money and Laundering Act, 2002. He further submits that in the complaint itself, the Enforcement Directorate has intimated about 19 criminal cases pending and the petitioner is not an accused in any one of the 19 cases. He submits that all those cases come within the purview of the schedule offences, but petitioner is not an accused of the scheduled offence.

6. Counsel further submits that the petitioner has been trapped by the prosecution in this case only and only due to the reason that the prosecution has found link against his father in the said case as he was purchaser of sand from the company who is accused No.1 in the said complaint case. Counsel further submits that petitioner is in custody since 18.09.2023 i.e., more than 6 months. He submits that from the content of the complaint, it become clear that the complaint has been filed on the basis of the summary of result of investigation under PMLA against the petitioner as mentioned in paragraph 9.7 and there is nothing more against the petitioner. He submits that bare perusal paragraph 9.7, nothing has come against the petitioner and if

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any, it is an allegation of tax evasion for which he has already filed his application before Income Tax department and this wrong shall not come within the purview of the scheduled offence.

7. Counsel further submits that there is one criminal case pending against the petitioner in which he is on bail, except that there is no criminal case pending against him. According to him the result of investigation is already on record in the form of complaint and cognizance has already been taken against him. He also submits that from the statement of the complaint, it transpires that the petitioner has supported during the investigation. As such, he seeks bail in this case.

8. Learned senior counsel for the Union, Mr. K.N. Singh submits that investigation has not been completed. He submits that under the Prevention of Money Laundering Act, 2002, the amendment has been inserted by Act No. 23 of 2019 under which section 44(d)(ii) clearly indicates that the complaint shall deem to include any subsequent complaint in respect to further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused persons involved in respect of the offence, for which the complaint has already been filed, whether name in the original

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complaint or not.

9. On the basis of said submissions as well as the law laid down under section 45 of PMLA, learned senior counsel for the Union submits that the opportunity to the public prosecutor may be granted to oppose the bail. At the time of hearing bail application. he submits that as per the information received from the department, there are series of more materials against the petitioner and as such, he seeks liberty to file a counter-affidavit in this case to oppose the prayer for bail.

10. In this background, this Court grants two weeks' time to the Union of India to file the counter-affidavit in this case.

11. Put up this case on 08.04.2024 within top 10 cases.

(Dr. Anshuman, J.)

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