

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.81759 of 2023

Arising Out of PS. Case No.-6 Year-2021 Thana- E.C.I.R (GOVERNMENT OFFICIAL)
District- Patna

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Shashikant Kumar S/O Ravindra Prasad @ Rabindra Prasad R/O Gagan
Diwan, Bank Colony, P.S. Laheri, Distict- Nalanda

... .. Petitioner

Versus

Union of India Through Assistant Director, Enforcement Directorate, Patna
Zonal Office, Bank Road, Chandpura Palace, Patna

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 3990 of 2024

Arising Out of PS. Case No.-6 Year-2021 Thana- E.C.I.R (GOVERNMENT OFFICIAL)
District- Patna

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Mannu Singh S/o Late Lolarkh Singh R/o Village Nanda Kapura, P.S-
Gyanpur, District-Sant Ravidas Nagar, Bhadohi Uttar Pradesh

... .. Petitioner

Versus

1. The State of Bihar
2. Union of India Through The Assistant Director, E.D.,Patna Zonal Office,
Patna Patna

... .. Opposite Party/s

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Appearance :

(In CRIMINAL MISCELLANEOUS No. 81759 of 2023)

For the Petitioner/s : Mr. Ansul, Advocate
Mr. Madhukar Anand, Advocate
For the ED : Dr. Krishna Nandan Singh, ASG
: Mr. Manoj Kumar Singh, adv,

(In CRIMINAL MISCELLANEOUS No. 3990 of 2024)

For the Petitioner/s : Mr. S.D. Sanjay, Sr. Advocate
Mr. Vishal Kumar, Advocate
Mr. Lokesh Kumar, Advocate
For the ED : Dr. Krishna Nandan Singh, A.S.G.
: Mr. Ram Anurag Singh, Advocate
: Mr. Shivaditya Dhari Sinha, AC to ASG
: Mr. Ankit Kumar Singh, Advocate

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**CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH
MISHRA**

ORAL ORDER

5 23-04-2024

Heard Mr. Ansul, learned counsel for the petitioner in



Cr. Misc. No. 81759 of 2023, Mr. S.D.Sanjay, learned Senior Counsel assisted by Mr. Vishal Kumar in Cr. Misc. No. 3990 of 2024 and Dr. K.N.Singh, A.S.G.-cum-learned Senior Counsel assisted by Mr. Ram Anurag Singh, for the Union of India.

2. The petitioners seek bail in connection with Special Trial (PMLA) P.S. case No. 03 of 2023 arising out of ECIR/PTZO/06/2021 dated 16.07.2021 instituted for the offences under Section 4 of the Prevention of Money Laundering Act (hereinafter referred to as 'PMLA Act').

3. Prosecution case, in brief, is that FIR No. 02 of 2021 dated 02.01.2021 was registered by Gandhi Maidan Police Station against Shubham Gupta in respect of alleged crime of cheating and forgery covered under Sections 419, 420, 467, 468, and 471 of the Indian Penal Code, for making an attempt to transfer a sum of Rs. 11,73,12,721/- from Account Number-1612046806 of CALA CUM DLAO Patna and PD NHAI PIU Gaya NH-83, maintained with Kotak Mahindra Bank, Exhibition Road Branch, Patna to the account of B.S. Enterprises held with ICICI Bank, Boring Road Branch, Patna by using RTGS forms and letters with forged/fake signatures. A charge-sheet No. 101 of 2021 dated 03.04.2021 was filed by Gandhi Maidan P.S. against Sandeep Kumar Gupta, Sarukh @



Riju and Sumit Kumar. It is alleged that in course of further investigation conducted by Gandhi Maidan P.S., it was found that total of Rs. 31,92,70,129/- (thirty one crores ninety two lacs seventy thousand one hundred and twenty nine) was fraudulently transferred from the account of CALA cum DLAO to the account of different entities/persons using forged documents/fake signatures.

3.1 It is further case of the complainant that during the course of investigation under PMLA, it has been revealed that Sumit Kumar, the then Branch Manager of Kotak Mahindra Bank, Boring Road, Patna conceptualized the whole process of siphoning of fund from the Account Nos. 1612046806 and 7812084686 of CALA cum DLAO in association with other persons including Shashikant Kumar (petitioner in Cr. Misc. No. 81759 of 2023) who assisted in siphoning and layering of proceeds of crime, through his *hawala* network, which was generated from the siphoning of government fund from the Account No. 1612046806 of CALA cum DLAO. A Look Out Circular (LOC) Notice was issued against Shashikant Kumar by Bureau of Immigration, New Delhi and in pursuance of the said LOC, he was detained by Immigration at Biju Pattnaik International Airport, Bhubaneswar and further, he was



arrested u/s 19(1) of the PMLA by officials of Enforcement Directorate and total six electronic/digital devices were recovered from his possession. It is further alleged that Shashikant Kumar had given an amount of Rs. 2,32,20,000/- to Amit Kumar who is the brother of Sumit Kumar. It is further alleged that petitioner Mannu Singh (in Cr. Misc. No. 3990 of 2024) is an associate of the co-accused Sumit Kumar, the then Branch Manager of the said Kotak Mahindra Bank.

4. Learned counsel, Mr. Ansul, appearing on behalf of the petitioner (in Cr. Misc. No. 81759 of 2023) submitted that the petitioner has falsely been implicated in this case by the investigating officer with a view to appease his senior officers on the score of solving the case. He further submitted that during investigation, this petitioner was not found involved in the predicate offence and due to the same, the petitioner was not charge-sheeted in the said case, i.e. Gandhi Maidan P.S. Case No. 02 of 2021 and this fact has also been admitted by the Enforcement Directorate in the Complaint petition. The name of this petitioner has transpired in this case only on the basis of disclosure made by the co-accused Sumit Kumar, the then Branch Manager of Kotak Mahindra Bank, Patna. Learned counsel further submitted that if the confessional statements of



co-accused person and petitioner which were recorded by Enforcement Department are taken as a whole, then it becomes crystal clear that the petitioner was not having knowledge about the predicate offence and the petitioner could not be connected with any process related to the proceeds of crime. Except the statement of the co-accused amounting to confession, there is no cogent material against the petitioner to show his involvement in the alleged offence. The petitioner is in custody since 02.08.2023 and has no criminal antecedent.

5. Learned Senior Counsel Mr. S.D. Sanjay, appearing on behalf of the petitioner (in Cr. Misc. No. 3990 of 2024) submitted that petitioner is not named in the FIR and his name has been transpired during investigation by the Enforcement Department as some money was shown to have been transferred in the account of the petitioner from the account of the District Land Acquisition Officer. Learned counsel submitted that the petitioner owns the enterprises registered under his mother's and wife's names, namely M/s Shakuntala Enterprises in which one Arun Kumar Dubey proposed to deposit Rs. 1.5 crores into the petitioner's account for a business arrangement, promising a 5% commission. In total, an amount of Rs. 3.05 crores was transferred to the bank accounts of the petitioner and the



enterprises registered under his mother's and wife's account. Subsequently, as the negotiations failed, the petitioner transferred Rs. 2.65 crores out of total Rs. 3.05 crores to various bank accounts as per instructions of Arun Dubey. Learned counsel further submitted that petitioner, at no point of time, was aware of the fact that the money which was transferred to the account of the petitioner, constitutes proceeds of crime. He further submitted that no properties or documents belonging to the petitioner or his enterprises have been confiscated, nor have any records or digital devices of the petitioner or his enterprises been requested/seized for retention under Section 8(3) of the Prevention of Money Laundering Act (PMLA). The petitioner is in custody since 18.08.2023 and has no criminal antecedent. Learned counsel further argued that the petitioner lacks *mens rea* and is not affiliated with any individual or group involved in the online betting or gaming business, which is the actual source of proceeds of crime. In this regard, learned senior counsel has relied on a case of *Vijay Madanlal Choudhary and Others vs. Union of India and others reported in 2022 SCC OnLine SC 929* (specially paragraph 388 thereof). The prosecuting agency, in the present case, falls short of providing a prima-facie satisfactory explanation for arraying the petitioner as one of the



accused. Learned Senior counsel further submitted that to constitute the offence of money laundering, the ED must prove a reasonable basis to believe that the offence has been committed. Reason to believe cannot be mere suspicion. Further referring to judgment reported in *Vijay Madanlal Choudhary (supra)* in which the Hon'ble Apex Court has observed that 'Bail is a rule and jail is an exception' even in economic offences. The same has been reiterated in a number of cases thereafter. Learned senior counsel has further relied on cases of Hon'ble Supreme Court in the case of *Sanjay Chandra vs. CBI (2012) 1 SCC 40* as also the case of *Satendra Kumar Antil Vs. CBI (2022) 10 SCC 51*. Learned senior counsel further submits that the petitioner satisfies the requirements of triple test as laid down in *P. Chidambaram Vs. Directorate of Enforcement* since reported in *(2020) 13 SCC 791*. Learned senior counsel lastly submitted that in view of the above, the petitioner should be granted the privilege of bail.

6. Per contra, Dr. K.N. Singh, A.S.G. appearing on behalf of the Enforcement Department assisted by Mr. Shivaditya Dhari Sinha, have vehemently opposed the prayer for bail of the petitioners and has filed counter affidavit(s) separately in both the bail petitions. Further, placing reliance on



the judgment passed by Hon'ble Apex Court in the case of *Vijay Madanlal Choudhary (supra)*, learned senior counsel for the ED has submitted that the twin conditions provided under Section 45(1)(i & ii) of the PMLA, 2002 restrict the right of the accused to grant of bail. Learned A.S.G. further submitted that as per proviso of Section 45(1), the petitioners also do not fall under the exceptions for grant of bail as the petitioners are not under the age of sixteen years or are a women or sick or infirm or are accused of money-laundering a sum of less than one crore rupees.

7. While opposing the prayer for grant of bail on behalf of petitioner Shashikant Kumar (in Cr. Misc. 81759 of 2023), learned Senior counsel appearing on behalf of Enforcement Department has submitted that during the course of investigation under PMLA, it revealed that an amount of Rs.8,77,02,029/- was fraudulently transferred on 15.12.2020 from the bank account no. 1612046806 of CALA Cum DLAO Patna & PD NHAI PIU GAYA maintained with Kotak Mahindra Bank, Exhibition Road Branch, Patna to the bank account no.- 19110100001119 of Red Rose PL maintained with NKG Co-operative Bank, Mumbai. Out of the said amount, 50% amount i.e. Rs.4,38,51,014/- was retained by M/s Red Rose Pvt. Ltd.



and remaining 50% amount i.e. Rs.4,38,51,015/- was received in cash by Sagar Suman and Amrit Kumar (associates of Sumit Kumar) at Chandani Chowk, New Delhi, thereafter Sagar Suman brought that amount to Patna with the help of hawala network of Shashikant Kumar and out of Rs.4,38,51,015/- an amount of Rs.3,68,00,000/- was received by Shashikant Kumar in Patna and remaining amount was kept by Sagar Suman. Further, Shashikant Kumar during the course of his statement dated 09.08.2023 recorded u/s 50 of PMLA, 2002 admitted the fact that he had received cash amounting to Rs. 3 crores (approx) in Patna from one of the associates of Sumit Kumar in Dec, 2020. From the above it is concluded that, Shashikant Kumar was the person who made the arrangement for bringing the amount of Rs.4,38,51,014/- from Delhi to Patna through his hawala network and further retained the proceeds of crime amounting to Rs.3,68,00,000/- with him.

8. Further while opposing the prayer for grant of bail on behalf of petitioner Mannu Singh (in Cr. Misc. 3990 of 2024), learned senior counsel for the ED further submitted that during the course of investigation under PMLA, it revealed that from the Bank Account No. 7812084686 of CALA-cum-DLAO & PD NHAI PIU Begusarai maintained with Kotak Mahindra



Bank, Exhibition Road Branch, Patna, an amount of Rs. 3,05,09,095/- was fraudulently transferred to the bank accounts of Mannu Singh and his associates the details of which viz. the details of the transactions, amount, name of beneficiary, account number and the name of the bank and branch were mentioned in paragraph 10 of the reply on behalf of the respondent. During the further course of investigation, it is revealed that out of the proceeds of crime amount of Rs. 3,05,09,095/- received by Mannu Singh, amount of Rs.79,49,095/- was utilized by him and remaining amount was transferred by him to the account of different entities/persons on the direction of associates of Sumit Kumar.

9. This Court would first deal with statutory provisions with regard to consideration of bail petition under the P.M.L.A. Act. It would be relevant to quote Sections 2(1)(p), 3, 4, 24 and 45(1)(i) and (ii) which are as under:

“2(1)(p) “money-laundering” has the meaning assigned to it in section 3;

3. Offence of money-laundering.-Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.



4. Punishment for money-laundering.- Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

24. Burden of Proof- In any proceeding relating to proceeds of crime under this Act-

(a) in the case of a person charged with the offence of money-laundering under Section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and

(b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.

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 on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(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:

Provided that a person who is under the age of sixteen years or is a woman or 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 so directs:

10. The PMLA Act has been enacted to prevent money



laundering and to prevent and to provide for confiscation of property derived from, or involved, in money laundering and for the matters connected therewith and incidental thereto. So far Section 24 of PMLA Act regarding burden of proof is concerned, from perusal of the complaint and the material on record, it appears that the accused-petitioners have failed to disclose facts showing their non-involvement in any process or activity with respect to the proceeds of crime and have also not been able to rebut legal presumption invoked in Section 24 of the PMLA. In so far as Section 45 of PMLA is concerned, it is manifest that in order to obtain bail, the accused-petitioners are saddled with the responsibility to demonstrate before the Court that they are not *prima facie* guilty of such offence. But from the materials available on record and considering the rival submissions made on behalf of both the parties, this Court is of the view that the accused-petitioners have not been able to show that *prima facie* they are not guilty of the offence alleged against them. The instant case, which is evident from the records, involves allegations pertaining to money-laundering of several crores of rupees by the accused persons. Section 45 makes the offences under P.M.L.A. to be cognizable and non-bailable. As regards the twin conditions for grant of bail contained in Section



45(1) of the PMLA, it has been held by the Hon'ble Apex Court in *Vijay Madanlal Choudhary (supra)* that the underlying principles and rigours of Section 45 of the Act must come into play and without exceptions ought to be reckoned to uphold the objectives of the Act, which is a special legislation providing for stringent regulatory measures for combating the menace of money laundering.

11. Under the facts and circumstances, from perusal of records, it appears that there is enough material on the record to show that the petitioners were actively involved in acquisition, disposal and transfer of proceeds of crime in connivance with main accused Sumit Kumar along with other co-accused persons. Further, petitioners aided the main accused Sumit Kumar in laundering the amount of Rs. 31,92,70,129/- fraudulently from the account of CALA-cum-DLAO to the accounts of different persons/entities using various documents and also tried to convert the proceeds of crime into untainted movable and immovable properties. It also transpires from the materials on record that the accused-petitioners also purchased agricultural land below the market price using the proceeds of crime. Further from perusal of the records, it appears that the accused-petitioners are involved in hawala business and the



allegation against the petitioners are grave and serious in nature. Further, it appears that accused-petitioners have direct involvement in receipt of proceeds of crime and further layering and laundering of proceeds of crime which make him liable for the offence of money laundering punishable under Section 4 of the PMLA.

12. Considering the above circumstances of the case and *prima facie* reading of the material placed on record and considering the parameters of Section 45(1) of PMLA as well as the gravity of the offence, it appears that the petitioners are involved in the alleged concealment, possession and using the properties acquired out of proceeds of crime and projected the same as tainted. As such, this Court is not inclined to grant bail to the petitioner. Hence, the bail of the petitioners is hereby rejected. However, the above observations are only tentative in nature only for the disposal of the bail application.

13. Let the trial be expedited expeditiously.

(Rudra Prakash Mishra, J)

Pankaj/Alok
Verma

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