

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10061 of 2024**

Arising Out of PS. Case No.-2 Year-2016 Thana- E.C.I.R (GOVERNMENT OFFICIAL)
District- Patna

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1. Binesh Prasad Gupta S/O Ram Chandar Saw Resident of Village - Pawapuri, Pokharpur, P.O. Pawapuri, P.S.- Giriyak, Dist.- Nalanda - 803115
 2. Manoj Kumar S/o Ram Chandar Saw Resident of Village - Pawapuri, Pokharpur, P.O. Pawapuri, P.S.- Giriyak, Dist.- Nalanda - 803115

... .. Petitioner/s

Versus

1. The Union of India
2. The Assistant Director, Directorate Of Enforcement Government Of India, 1st Floor, Chandpura Palace Bank Road, West Gandhi Maidan, Patna-800001.
3. District Manager, Bihar State Food And Civil Supplies Corporation, Distt.- Nalanda. Bihar

... .. Opposite Party/s

Appearance :

For the Petitioners : Mr. Vishal Kumar
Mr. Lokesh Kumar, Adv.
Ms. Jaya Sonam, Adv.
Mr. Vikash Khanna, Adv.

For the O.P.-1 & 2 : Dr. K.N. Singh (ASG)

Mr. Manoj Kumar Singh, Adv.

For the B.S.F.C./OP-3 : Mr. Shailendra Kumar Singh, 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 petitioners in connection with Special Trial No. (PMLA) 07 of 2018 arising out of ECIR No. PTZO/02/2016 dated 28.08.2016 instituted for offences punishable under Section 4 of the Prevention of Money Laundering Act, 2002 (for short "PMLA").



2. According to the prosecution, after preliminary inquiry against these petitioners and other co-accused persons who have found to have committed the offence of Section 3 of the PMLA, the complaint was filed on F.I.R. bearing no.77/2013 dated 04.05.2013 registered initially by P.S. Giriyak, Nalanda Bihar against co-accused Dinesh Prasad Gupta, Proprietor of M/s Pawapuri Rice Mill under Sections 406, 406, 407, 409 & 420 of Indian Penal Code. It is alleged that co-accused Dinesh Prasad Gupta, on behalf of M/s Pawapuri Rice Mills had received total 1,90,381.31 quintals of paddy as per agreement executed with Bihar State Food & Supplies Corporation Ltd. and M/s Pawapuri Rice Mills had to deposit 1,29,459.17 quintals of rice (68% of Paddy received) to the Food Corporation of India but he could deposit only 75293.39 quintals of rice. Hence, the suspect firm had misappropriated 54,165.70 quintals rice valued at Rs. 10,15,94,961/- (Rs.Ten Crore Fifteen lacs Ninety Four Thousand Nine Hundred and Sixty One only) at the rate of Rs.1875.63 per quintals. Therefore, charge-sheet no.243/2013 dated 31.12.2013 was filed against co-accused Dinesh Prasad Gupta & others and they have been charged for offences of cheating and dishonestly inducing delivery of property. The amount of loss caused to the State exchequer is the proceeds of crime generated by the accused



from the schedule offence for which, a case of money laundering as defined under Section 3 and punishable under Section 4 of the Prevention of Money Laundering Act (PMLA), 2002, has been registered against them.

3. Learned counsel appearing on behalf of petitioner submits that petitioner has been falsely implicated in this case. As a matter of fact, petitioner no.1 has been making investment in properties since 2012 out of his personal income, whereas petitioner no. 2 is engaged in the business of running *Dharmkanta* and trading of food grains. As the petitioners are formal partners in M/s. Pawapuri Rice Mill, they had no role in the business or any financial decisions related to the alleged misappropriation. He further submits that petitioner no. 1 appeared before the concerned authorities on 06.03.2018 and 19.03.2018, providing statements under Section 50 of the PMLA in response to summons from the Enforcement Directorate (ED) and petitioner no. 2 appeared on 19.03.2018, before the ED during the Investigation. The ED has already submitted charge-sheet in form of Complaint U/S 44 of the PMLA giving rise to Complaint No. 07 of 2018 and the petitioner no. 1 has been made named as accused no. 4, whereas petitioner no. 2 is named as accused no. 5 in the said complaint. The investigation by the ED has now been completed and the learned



Special Court-cum-Sessions Court (PMLA), Patna has taken cognizance under Section 3 of PMLA punishable under Section 4 of PMLA against all the named accused including these petitioners and now the petitioners are only required to face trial.

4. Lastly, learned counsel for the petitioners 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.

5. On the other hand, learned counsel appearing on behalf of opposite party 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 all the accused persons including these petitioners have not appeared in spite of summons issued to them by the Court concerned and during investigation under PMLA, it is revealed that co-accused Dinesh Prasad Gupta knowingly failed to deposit rice and misappropriated total 54,165.70 quintals of rice valued to at Rs.10.15 crore was defalcated and equivalent loss was caused to State exchequer and during investigation, it is established that co-accused Dinesh Prasad Gupta and his wife co-accused Neelam Devi have acquired huge immovable properties along with other accused persons without having any legal source and income during the period which are the proceeds of crime whereas petitioners were also involved in acquisition, concealment, transfer



of proceeds of crime and projection of the same untainted with the main accused Dinesh Prasad Gupta as partner of firm M/s Pawapuri Rice Mill. Accordingly, he submits that after consideration of 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 petitioners, vide order dated 03.05.2019, and this Court should refrain from interfering with the said order.

6. 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 petitioners and accordingly, the order impugned i.e. order dated 03.05.2019 passed by learned Sessions Judge /Special Judge (PMLA), Patna in Special Trial No. (PMLA) 07 of 2018 (arising out of ECIR No. PTZO/02/2016) is, hereby, set aside in respect of these two petitioners only, 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 petitioners 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 they shall regularly and punctually appear before the Special Court on the dates fixed unless their appearance is specifically exempted by the exercise of powers under Section 205 of the Cr.P.C.; and

(ii) The petitioners 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.

7. With above observation and direction, this petition is allowed.

(Prabhat Kumar Singh, J.)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	20.09.2024
Transmission Date	20.09.2024

