

IN THE HIGH COURT OF JHARKHAND AT RANCHI
B.A. No. 16501 of 2021

Bindeshwar Ganjhu @ Bindu Ganjhu. Petitioner
Versus
Union of India Through Directorate of Enforcement Kaushalya Chamber,
PP Compound, Ranchi. Opp. Party

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioner : Mr. Anshuman Kumar, Advocate
: Mr. Niranjan Kumar, Advocate.
For the Opp. Party : Mr. Amit Kumar Das, A.P.P.

C.A.V. on 19.04.2022 : **Pronounced on 28.04.2022**

The genesis of this complaint is based on F.I.R. bearing No.02/2016 dated 11.01.2016 registered on Tandwa P.S. Chatra District Chatra for the offence under Sections 414/120-B read with 420/384/386 & 387 of the Indian Penal Code and Section 25 (1-B) (a), 26 & 35 of Arms Act, 1959 and Section 17 (1) (2) of Criminal Law Act wherein Superintendent of Police, Chatra had received secret information from reliable sources that some people have formed a committee in Amarpali & Magadh Coal Area, Tandwa connected with T.P.C. (Tritiya Prastuti Committee), an organization of terrorist gang declared unlawful association by the Govt. of Jharkhand and members of this Committee namely Shri Gopal Singh Bhokta @ Brajesh Ganghu, Shri Munesh Ganghu, Shree Kohram Jee, Shri Aakraman Jee @ Rabindra Ganjhu, Shri Anishchay Ganjhu, Shri Dipu Singh @ Bhikhan, Shri Bindeshwar Ganghu @ Bindu Ganghu and Shri Bhikhan Ganghu used to extort levy from the contractor, Transporters, Delivery Order Holders and Coal Merchants and hand over the same to T.P.C. organization. In case of non-payment of levy, they used to threaten them with dire consequences. For verification of secret information, a team of police officials was constituted and raid was conducted by the team at the house of Binod Kumar Ganjhu on 11.01.2016 and recovered cash of Rs.91,75,890/- and two mobile phones and Munesh Ganjhu and Birbal Ganjhu were also found in suspicious conditions and from their possession one loaded Mouzer Pistol and one country made pistol and two live cartridges of caliber were recovered from Birbal Ganghu and from Mukesh Ganjhu respectively and they disclosed that they had connection with T.P.C. extremist organization and Binod Kumar Ganjhu also disclosed that he was working for T.P.C. as Chairman and after collecting the levy amount, the same was distributed among them. On disclosure being made by Binod Kumar Ganghu, house

of Pradeep Ram was also raided and a sum of Rs. 57,57,710/- was recovered. Accordingly, F.I.R. bearing No.02/2016 was lodged by S.I. Ramdhari Singh of Simaria Police Station. Charge-sheet bearing No.17/16 was filed on 10.03.2016 before the Court of C.J.M., Chatra against Binod Kumar Ganjhu, Pradeep Ram, Munesh Ganjhu, Birbal Ganghu & Bindeshwar Ganjhu @ Binod Ganjhu under Sections 414/384/386/387 & 120-B of IPC, 1860, 25 (1-B) A, 26 & 35 of the Arms Act and 17 (1) (2) of Criminal Law Amendment Act. Since the matter in regard to the recovery of cash to the tune of Rs.1,49,33,610/- on account of extortion and destructive activity also and other incriminating materials from Maoist cadre, who were actively involved in destructive activities against the State, the matter was handed over to National Investigation Agency for further investigation. Accordingly, Tandwa P.S.No. 02/2016 dated 11.01.2016 was re-registered as N.I.A. Case No. RC-06/2018/NIA/DLI dated 16.02.2018 under Sections 414/384/386/387/120B of the IPC, Section 25(1-B) a, 26,35 of the Arms Act and 17 (1) (2) of the Criminal Law Amendment Act and 16,17,20 & 23 of the Unlawful Activities (Prevention) Act, 1967 and the NIA has submitted supplementary charge-sheet against aforesaid accused vide 32/2018 dated 21.12.2018 and second supplementary charge-sheet vide 32A/2018 dated 10.01.2020.

2. Since the offence under Section 120-B read with 386 & 387 of Indian Penal Code, Section 25 & 26 of Arms Act, 1959 are specified in part A of the schedule to the PML Act,2002 read with Section 2 (1) (x) and (y) of the said Act as schedule offence and money recovered from levy was a tainted property projected by the accused persons as untainted property, the Directorate of Enforcement also commenced simultaneous investigation after registering the complaint case as Enforcement Case Information Report (ECIR) No. RNSZO/02/2016 dated 15.09.2016 and filed the aforesaid complaint case against the aforesaid accused persons for their prosecution.

3. The brief facts of the charge levelled, allegations made in the complaint under PMLA, 2002 are that Binod Kumar Ganjhu, Pradeep Ram and Bindeshwar Ganjhu were the members of the Tritiya Prastuti Committee working in Magadh Amarpali area which is unlawful association/Terrorist Gang. They used to extort levy from local contractors and hand over to the same to TPC members. For the said purpose a committee was formed in the name of the "SHANTI SAH SANCHALAN SAMITI" for each

village namely Winglat, Honhe, Kumrang Khurd, Kumrangkala and Udsu having 7 members from each village wherein Bindeshwar Ganjhu @ Bindu Ganjhu was president of Honhe village. The overall responsibility of the committee was given to Bindeshwar Ganjhu @ Bindu Ganjhu. Binod Kumar Ganjhu and Bindeshwar Ganjhu @ Bindu Ganjhu used to hand over the levy amount to Akarman Ji @ Ravinder Ganjhu who was the regional commander in T.P.C. having specified areas including Tandwa, Magadh Amarpali. In the absence of Binod Kumar Ganjhu and Bindeshwar Ganjhu @ Bindu Ganjhu, Pradeep Ram worked on behalf of Bindeshwar Ganjhu @ Bindu Ganjhu and collected levy for TPC and committee. During investigation, it was also revealed that Binod Kumar Ganjhu, Proprietor of M/s Bhogta Constructions and Pradeep Ram proprietor of M/s Pradeep Traders also used to transport the coal on behalf of other transporters and collect the levy amount through the accounts of M/s Bhogta Constructions and M/s Pradeep Traders respectively. Likewise Bindeshwar Ganjhu @ Bindu Ganjhu was also Director of M/s Maa Gange Coal Traders Ltd. Registered address H No-11, Honhe village Honhe, P.S. Tandwa, Dist. Chatra, Jharkhand.

4. During investigation, it also revealed that 14 vehicles were registered in the name of Bindeshwar Ganjhu which were identified as proceeds of crime worth Rs. 2,03,000,00/- and same were attached vide PAO No. 02/2021 dated 25.02.2021. It was also found that the applicant-Bindeshwar Ganjhu @ Bindu Ganjhu was directly indulged in criminal activities and generated proceeds of crime under the provisions of Section 3 of PMLA, 2002 which is punishable under Section 4 of the PMLA, 2002 and being the Director of M/s Maa Gange Coal Traders Ltd. he used to transport coal on behalf of other transporters and collect levy amount through the accounts of Maa Gange Coal Trading Pvt. Ltd. and he was active member of T.P.C. working in Magadh Amarpali area.

5. Learned Counsel for the applicant has submitted that the applicant is innocent and has been falsely implicated in this case. The entire case is based on documentary evidence. The properties held in the name of the applicant or in the name of company M/s Maa Gange Coal Trading Pvt. Ltd. were attached vide order POA No.04/2018 by Directorate of Enforcement therefore there is no chance of siphoned off the properties. The applicant also belongs to a well settled family having good exposure of construction and transportation business and has about 15 acres of ancestral

agricultural land. Undisputedly the applicant was doing transportation business. More than 100 trucks of different truck owners were working in his company and all payments were made through proper banking channel. Allegations against the applicant are general an omnibus. There is no cogent evidence against the applicant to connect him being the member of T.P.C. The petitioner is in custody since 15.08.2018 in main scheduled offence NIA case bearing case No. RC-06/2018/NIA/DLI and remanded in the present PMLA Case on 24.03.2021. It is also further contended that only evidence against the applicant is the statement of one Subhan Mian and rest of the witnesses were the officials and their statement was recorded under Section 50 of PMLA Act as had conducted the investigation in NIA case and police case as well which were earlier registered against the applicant. It is also further submitted that twin conditions of Section 45 of PMLA Act have been declared unconstitutional by the Hon'ble Apex Court in case of **"Nikesh Tarachand Shah Vs. Union of India & Anr. (Nikesh Shah)** as such same would not apply while considering bail application of the applicant. In support of his contentions, the learned Counsel for the applicant relied upon the following case laws:-

1. P. Chidambaram Vs. Directorate of Enforcement MANU/SC/1670/2019;2020 (1) BLJ 200.
2. Nikesh Tarachand Shah Vs. Union of India (UOI) and Ors. MANU/SC/1480/2017.
3. Sanjay Chandra Vs. CBI MANU/SC/1375/2011; 2012 (1) SCC 40
4. State of Kerala Vs. Respondent: Raneef MANU/SC/0001/2011; 2011 SCC 784.
5. Binod Kumar Sinha Vs. State of Jharkhand MANU/JH/0089/2013
6. Madhu Koneru Vs. The Director of Enforcement (MANU/TL/0393/2021)
7. HDFC Bank Limited Vs. Government of India and Ors. (MANU/BH/0417/2021)
8. Anil Tuteja and Ors. Vs. The Director, Directorate of Enforcement and Ors. (MANU/CG/0463/2020)
9. Arun Kumar Mishra Vs. Directorate of Enforcement (MANU/DE/1095/2015)
10. Upendra Rai Vs. Directorate of Enforcement (MANU/DE/2194/2019)
11. Ahilya Devi Vs. The State of Bihar and Ors. (MANU/BH/0245/2020)
12. Opto Circuit India Ltd. Vs. Axis Bank and Ors. (MANU/SC/0049/2021)
13. Vinod Bhandari Vs. Assistant Director, Directorate of Enforcement MANU/MP/0618/2018
14. Ahilya Devi Vs. The State of Bihar and Ors. (MANU/BH/0245/2020)
15. Upendra Rai Vs. Directorate of Enforcement (MANU/DE/2194/2019)

16. SUNIL SURENDRA KUMAR KAKKAD Versus STATE OF GUJARAT
THE HIGH COURT OF GUJARAT IN R/CRIMINAL MISC. APPLICATION NO.
23944 of 2019
17. Rajeev Sharma Vs. Directorate of Enforcement MANU/DE/0076/2022
18. Parkash Gurbaxami Versus The Directorate of Enforcement through
Assistant Director CRM-M-12901-2021 (O&M) IN THE HIGH COURT OF
PUNJAB AND HARYANA AT CHANDIGARH.
19. Lalit Goyal Vrs. Directorate of Enforcement and another CRM-M-7039-2022
(O & M) IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

6. Per contra learned Counsel appearing on behalf of the Directorate of Enforcement opposed the contentions made by the learned Counsel for the applicant and contended that the applicant was active member of unlawful association; a banned terrorist organization T.P.C. and used to extort levy from local contractors. For the said purpose and a committee was formed in the name of '**Shanti Sah Sanchalan Samittee**' for each village of the area and the applicant was president of Honhe village. Huge amount of proceeds of crime has been attached by the Department of Enforcement because no satisfactory reply was given by the applicant and after declaring twin conditions of Section 45 (1) of PML Act as unconstitutional by the Hon'ble Apex Court in "**Nikesh Tarachand Shah** (supra), the said defects have been cured by the Parliament by way of Amendment No.13/2018 as such the provisions of Section 45 (1) revived and same would be applicable while considering the bail application of the applicant.

7. For disposal of this bail application, the following provisions of the Act, 2002 are being reproduced as under:-

Section 2(p) of the Act, 2002 provides:-

"(p)" money-laundering" has the meaning assigned to it in Section 3."

Sections 2(y) of the Act, 2002 provides:-

**"(y) "scheduled offence" means –
(i) the offences specified under Part A of the Schedule; or
[(ii) the offences specified under Part B of the Schedule if
the total value involved in such offences is [one crore
rupees]
or more; or
(iii) the offences specified under Part C of the Schedule;]"**

Sections 3 and 4 of the Act, 2002 provides as under:-

"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.

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted."

8. Learned counsel for the applicant has submitted that there are no reasonable ground from the materials on record, against the applicant, that he has committed the alleged offence of money laundering. It is further submitted that the provisions of Section 45 of the Act, 2002 has been declared unconstitutional by the Hon'ble Apex Court in the case of **Nikesh Tarachand Shah vs. Union of India & Anr.** reported in **(2018) 11 SCC 1**. After that judgment, the Section 45 of the Act, 2002 was amended by the Parliament by Act 13 of 2018 w.e.f. 19th April, 2018 and the amended provisions of Section 45 of the said act are under challenge before the Hon'ble Apex Court, therefore, the Section 45 of the Act, 2002 would not apply in the present case.

9. Learned counsel for the Directorate of Enforcement opposed this contention and contended that the provisions of Section 45 which was declared unconstitutional by the Hon'ble Apex Court in the case of **Nikesh Tarachand Shah (supra)** was cured by the Amendment Act 13 of 2018. Consequently, the presumption in regard to the constitutionality of the Section 45 of the Act, 2002 would be raised. It is further submitted that the amendment in Section 45 of the said act is under consideration before the Hon'ble Apex Court but the amended provision has not been stayed by Hon'ble Apex Court, therefore, the same will be applicable; while considering the bail application of the applicant.

10. This Court is of the considered view that the provisions of Section 45 of the Act, 2002 prior to judgment of Hon'ble Apex Court in the case of **Nikesh Tarachand Shah (supra)** had been declared unconstitutional; but the defects in provisions of the said Act was cured by Parliament by way of Amendment Act 13 of 2018 and consequently, the twin conditions of Section 45 while disposing of the bail application under the Act, 2002 stood revived.

11. The Hon'ble Apex Court in the case of **Cheviti Venkanna Yadav vs. State**

of **Telangana** reported in **2017 (1) SCC 283** has held as under:-

"27. In State of Himachal Pradesh v. Narain Singh while dealing with the validation of statute the court ruled that:-

"It is therefore clear where there is a competent legislative provision which retrospectively removes the substratum of foundation of a judgment, the said exercise is a valid legislative exercise provided it does not transgress any other constitutional limitation."

12. The twin conditions under Section 45 (1) for the offences classified thereunder in Part-A of the Schedule was held arbitrary and discriminatory and invalid in **Nikesh Tarachand Shah (supra)**. Subsequently, the Section 45 of the Act, 2002 has been amended by Amendment Act 13 of 2008, whereby the words **"imprisonment for a terms of imprisonment of more than three years under Part A of the schedule"** has been substituted with **"accused of an offence under this Act....."**

13. The Hon'ble Apex Court in **"Assistant Director Enforcement Directorate vs. Dr. V.C. Mohan" 2022 LL (SC) 16** held once the prayer for bail is made for the offence under PMLA 2002, the rigors & principle underlying Section of 45 get triggered on.

14. The Hon'ble Apex Court in the case of **Prakash Gurbaxani v. The Directorate of Enforcement** reported in **2021 SCC Online P & H 1567** has held as under:-

".....18. By Act 13 of 2018 Section 45 (1) of the PMLA was sought to be amended w.e.f. 19.04.2018. Through such amendment the words "punishable for a term of imprisonment of more than three years under Part A of the Schedule" as occurring in Section 45(1) before the judgment of the Supreme Court in Nikesh Tarachand Shah's case (supra) were substituted with the words "under this Act". As per learned ASG, after such amendment, the defect on the basis of which the Supreme Court had declared Section 45(1) of the PMLA to be unconstitutional was cured and consequently the twin conditions prescribed in Section 45(1) stood revived.

15. The Hon'ble Apex Court in the case of **YS Jagan Mohan Reddy vs. C.B.I.** reported in **2013 (7) SCC 439** has held as under:-

"34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public

funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."

16. The Hon'ble Apex Court in the case of **State Of Gujarat vs. Mohanlal Jitmalji Porwal and Ors.** reported in **1987 (2) SCC 3645** has held as under:-

".....5. The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest....."

17. In view of submissions made and material on record there are reasonable ground for believing that applicant is guilty of the offences of money laundering and he is likely to commit any offence, if enlarged on bail. Accordingly, the prayer for bail of the Applicant is hereby refused.

(Subhash Chand, J.)

P.K.S./ A.F.R.