IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.1245 of 2022

An application under Section 439 of the Code of Criminal Procedure, 1973.

AFR Ashok Kumar Saha ..... Petitioner

-Versus-

Union of India ..... Opp. Party

Advocate(s) appeared in this case :-

For Petitioner	:	Mr. M. Kanungo, Sr. Advocate along with Mr. M. Swain, Advocate
For Opp. Party	:	Mr. Sarthak Nayak, Special P.P.-cum-Retainer Counsel, CBI.

CORAM :

JUSTICE SASHIKANTA MISHRA

ORDER
28th March, 2022

SASHIKANTA MISHRA, J.

The petitioner is in custody since 12.09.2015 in connection with SPE No. 34/2014 corresponding to T.R.

No. 4 of 2017 of the Court of learned Special Judge (CBI-1), Bhubaneswar, Khurda for the alleged commission of offence under Sections 420/408/409/120-B/34 of IPC read with Sections 4, 5 and 6 of Prize Chits & Money Circulation Scheme (Banning) Act, 1977.

2. The prosecution case, bereft of unnecessary details is that the petitioner is one of the Directors of Rose Valley Group of Companies including Rose Valley Hotels and Entertainments Ltd., Rose Valley Real Estate Constructions Ltd. and Real Estate & Land Bank India Ltd. In such capacity, the petitioner is alleged to have entered into a conspiracy with other Directors and officials of the said companies to collect deposits from the public giving false assurance of returning high profits thereon. Basing on such false assurance, the agents of the companies collected huge amounts from ordinary persons across the country running into thousands of crores and utilized the same for other purposes without making any returns to the depositors. In so far as the present petitioner is concerned, it is alleged that he occupied a pre-eminent position in

Rose Valley Group and was part of the decision-making process of the company and as such, he is responsible for non-return of around Rs.9,000 crores to the depositors of Rose Valley Group across the whole of India. As such, it is alleged that the petitioner is guilty of criminal conspiracy, cheating, criminal breach of trust and of promoting and running price chit and money circulation schemes. In so far as the State of Odisha is concerned, it is alleged that a total sum of Rs.713,06,24,493/- remains outstanding for repayment to the depositors.

Be it noted here that as per orders passed by the Hon'ble Supreme Court of India on 09.05.2014 in W.P.(C) Nos. 401 of 2013 and 413 of 2013, 44 cases were registered by the CBI/SCB/SIT/KOLKATA in respect of 44 companies collecting money from the public in Odisha. The present case is one amongst the said 44 cases.

3. Heard Mr. M. Kanungo, learned Senior Counsel appearing along with Mr. M. Swain, learned counsel for the petitioner and Mr. Sarthak Nayak, learned counsel appearing for CBI.

4. Mr. Kanungo would contend at the outset that the very fact that the petitioner is in custody for more than 6 and ½ years makes him entitled to be released on bail. It is submitted that in so far as the offence under Section 420 is concerned, the maximum punishment prescribed is seven years. Similarly, the maximum punishments prescribed for the offence under Sections 4 and 6 of the Prize Chits & Money Circulation Scheme (Banning) Act, 1977 are three years each and so far as the offence under Section 409 of IPC is concerned, though the punishment prescribed is imprisonment for life or with imprisonment for a term which may extend to ten years, the same in its application to the State of Odisha, has to be treated as punishment for maximum period of seven years only. Elaborating on his arguments learned Sr. Counsel would contend that the offence under Section 409 of IPC is triable by the Court of Judicial Magistrate First Class in Odisha. As per Section 29(2) of the Cr.P.C., the Court of a Magistrate of First Class can only pass a sentence of imprisonment for a term not exceeding three years. In such

event if the Magistrate finds that the accused is guilty and deserves more punishment than what he is empowered to impose, then taking recourse to the provision under Section 325 of Cr.P.C., the said Magistrate may submit the case to the Chief Judicial Magistrate for passing adequate sentence. Mr. Kanungo argues that since the Chief Judicial Magistrate can impose a sentence of imprisonment not exceeding seven years as per Section 29(1) of Cr.P.C. in so far as the State of Odisha is concerned, the maximum punishment for the offence under Section 409 IPC has to be treated as 7 years only. Mr. Kanungo has also submitted that the State of Madhya Pradesh has brought an amendment to Section 409 of IPC to make it triable by the Court of Sessions instead of the Magistrate First Class. According to Mr. Kanungo, such amendment has not been made in the State of Odisha. This, according to Mr. Kanungo clearly reveals the legislative intent of the offence under Section 409 of IPC being triable by the Court of Magistrate First Class and therefore, the maximum period of punishment that can be imposed has to be held as seven years. Since the petitioner in the instant case has admittedly been incarcerated as an under-trial prisoner for more than half of the seven-year period, he is entitled to be released on bail as per the provisions under Section 436-A of Cr.P.C..

On merits, it is argued by Mr. Kanungo that the petitioner has been entangled in the case without any specific allegation made against him, rather because of his status as the Director of the company he has been implicated only on suspicion. It is further submitted that the petitioner has resigned from the Rose Valley Company in the year 2012 and whatever money he has in his bank account is out of his own income including EPF dues and therefore, the question of cheating the public does not arise. It is finally submitted by Mr. Kanungo that though the I.O. submitted a preliminary charge sheet yet, despite lapse of more than six years, the final charge sheet has not been submitted, which is a deliberate ploy to keep the petitioner in custody citing continuance of investigation.

5. Per contra, Mr. Sarthak Nayak, learned counsel appearing for the CBI has forcefully opposed the prayer for bail by submitting that Section 436-A of Cr.P.C. would not be applicable to the petitioner because, as per the said provision, the maximum punishment prescribed for the offence in question has to be taken into consideration for releasing the accused on bail. Disagreeing with the interpretation made by Mr. Kanungo with regard to the provision under Section 409 of IPC in its application to the State of Odisha, Mr. Nayak would argue that Section 436-A Cr.P.C. does not permit of any such interpretation as the language employed therein is clear and unambiguous. Since the maximum punishment prescribed under the said provision is imprisonment for life, the petitioner cannot claim the benefit under Section 436-A Cr.P.C. on the ground of put in more than six years in prison.

On merits, it is submitted by Mr. Nayak that the petitioner was a prominent member of the group that hatched the conspiracy to dupe gullible depositors solely with the intention of cheating them. In the process, the said group has collected astronomical sums of money running into thousands of crores which still remain to be paid to the poor depositors.

It is further contended that the modus operandi and the network created by the aforementioned group spreads to almost every nook and corner of the country for which investigation is still in progress including continuance of forensic auditing. Moreover, considering the pre-eminent position of the petitioner, it is likely that he may influence the poor depositors who mostly belong to the lower strata of the society and thereby influence the trial.

6. I have given my anxious consideration to the rival contentions noted above as also have perused the materials on record carefully. To address the first contention advanced by learned Senior Counsel it would be profitable to refer to the provision under Section 436-A of Cr.P.C.

> ***436-A. Maximum period for which an undertrial prisoner can be detained.****- Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties;*
>
> *Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties;*
>
> *Provided further that no such person shall in any case be detained during the period of investigation inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.*

A bare reading of the provision makes it clear that the said benefit would be applicable only when the accused had undergone detention for a period extending up to one-half of the 'maximum' period of imprisonment specified for the offence in question.

7. Now, there is no dispute that the maximum period of punishment prescribed under Section 409 of IPC is imprisonment for life. The arguments putforth by Mr. Kanungo that the maximum period of punishment under Section 409 of IPC in so far as the State of Odisha is concerned should be treated as seven years only because

the same is an offence triable by the Magistrate First Class, is fallacious and untenable. For such an argument to hold good, there must be a corresponding enabling provision in section 436-A of Cr.P.C.. There is no gainsaying that when the statute prescribes a thing to be done in a particular manner, the same shall be done in that manner or not at all. So unless the language employed in Section 436-A of Cr.P.C. is amenable to any such interpretation, the point canvassed by Mr. Kanungo cannot be accepted. To reiterate, when the provision under Section 436-A of Cr.P.C. lays down in clear and unambiguous terms that the 'maximum' period of imprisonment specified for the offence in question has to be reckoned, there cannot be any watering down of the same and therefore, in so far as section 409 of IPC is concerned, this Court is of the humble view that the maximum period of imprisonment has to be treated as imprisonment for life in the context of Section 436-A of Cr.P.C.. The interpretation sought to be made by Mr. Kanungo cannot, by its very nature be read into the provision under Section 436-A of Cr.P.C.

particularly in view of the strict language employed therein.

Therefore, this Court is unable to accept the contention advanced by Mr. Kanungo.

8. Having dealt with the legal proposition as narrated above, this Court, after examining the materials on record finds that the amount of money collected by the group of companies of which the petitioner was one of the Directors is really astronomical being to the tune of Rs.9000 crores for the whole of India and more than Rs.700 crores in so far as the State of Odisha is concerned. Though it is claimed that the petitioner had no role to play, the same is difficult to believe in view of the fact that he had occupied a pre-eminent position in all the three companies, which were involved in collection of money from private depositors. Further, there are materials to show that he was also involved in the decision-making process of all the companies in his capacity as the

Director. It has been submitted that the petitioner is no longer the Director of the company having resigned since 2012, but as it appears from the FIR, the petitioner was the Director of Real Estate and Land Bank India Ltd. from 13.10.2011 to 27.02.2012, but in so far as Rose Valley Hotels and Entertainments Ltd. is concerned, he has been continuing as the Director since 02.02.2010 and in so far as Rose Valley Real Estate Constructions Ltd. is concerned, he has been continuing as such since 17.05.2006.

9. As regards the arguments that there is inordinate delay in completion of investigation, it is to be noted that a huge network was built by the companies all over the country involving several stakeholders and institutions and hence, the inability of CBI to submit final charge sheet is understandable and cannot enure to the benefit of the accused petitioner.

10. In the case of **Y.S. Jagan Mohan Reddy vs. Central Bureau of Investigation**, reported in AIR 2013 SC 1933, the apex Court held as follows;

> *15. 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. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.*

11. As has already discussed hereinbefore, the allegations levelled against the petitioner are very serious inasmuch as a large number of depositors have been duped of their hard-earned money and the amount so swindled is huge, Trial is also yet to begin. Considering the status and position of the petitioner, the possibility of tampering with the evidence or influencing the poor

depositors at his instance cannot be ruled out entirely. Taking into consideration all the above factors therefore, this Court is not inclined to allow the prayer for bail.

12. The BLAPL therefore stands rejected.

....
Sashikanta Mishra,
Judge

Orissa High Court, Cuttack
The 28th March, 2022/ A.K. Rana