# IN THE HIGH COURT OF ORISSA, CUTTACK

## <u>BLAPL No. 1425 of 2022</u>

Application under section 439 of the Code of Criminal Procedure in connection with Lalbag P.S. Case No. 321 of 2020 corresponding to G.R. Case No. 1591 of 2020 pending in the Court of S.D.J.M. (Sadar), Cuttack.

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Satyam Pradhan ...... Petitioner

*-Versus-*

State of Odisha ...... Opp. Party

For petitioner: - Mr. Yasobant Das
Senior Advocate

For opp. Party: - Mr. Susamarani Sahoo
Addl. Standing Counsel

For informant: - Mr. Asit Kumar Choudhury
Advocate (for the informant)

**CORAM:**

**JUSTICE S.K. SAHOO**

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Date of Hearing : 15.12.2022 Date of Order:20.12.2022

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**S.K. SAHOO, J.** The petitioner Satyam Pradhan has filed this application under section 439 of Cr.P.C. for grant of bail in connection Lalbag P.S. Case No. 321 of 2020 corresponding to G.R. Case No. 1591 of 2020 pending in the Court of learned S.D.J.M. (Sadar), Cuttack in which charge sheet has been submitted under sections 420, 406, 409, 467, 468, 471, 379, 120-B, 34 of the Indian Penal Code.

The petitioner moved an application for bail in the Court of learned 2nd Addl. Sessions Judge, Cuttack, which was rejected vide order dated 09.02.2022.

2. The factual matrix of the case, in hand, is that one Ayan Saha Roy, Area Manager of India Infoline Finance Limited (hereafter in short 'IIFL') attached to the Branch Office, Nayasarak, Cuttack lodged a written report before the Inspector in-charge of Lalbag Police Station, Cuttack on 29th December 2020 to take stern action against the delinquent employees/culprits, namely, Satyam Pradhan (petitioner), the Branch Manager of IIFL, Nayasarak Branch (hereafter in short 'Company'), Lala Amrut Sagar Ray, Nilima Lenka and Kabi Prasad Pradhan, who were involved in the incident of staged dacoity that occurred on 19.11.2020 at the Company as strong suspicion emerged during the internal investigation/inquiry and audit as regard to their involvement for the act of omission and commission of theft, forgery, criminal breach of trust, wrongful gain and wrongful loss, criminal conspiracy and other allied offences of the Indian Penal Code. After a complete and careful investigation by the authority, it came to the notice that while the aforesaid persons were being employed, they were in the habit of doing all the misdeeds causing loss to the Company and in order to cover up their misdeeds and divert the attention of the higher officials of the Company, they in connivance with some customers and outsiders entered into a criminal conspiracy as the required number of packets were not available in the vault and staged an incident of dacoity that occurred on 19.11.2020 to show looting of

756 packets (out of this four packets have been retrieved from the auction Hub vide GL.10371281, GL.10558199, GL11101977, GL11860874 with total weight of 32.3 gms.) of gold ornaments weighing 33.71 kgs. from the total collateral security of 39.01 kgs contained in 1133 packets and took away whatever packets were available in the vault and cash of Rs.4.40 lakhs. It is further stated in the F.I.R. that audit was conducted on the packets, which were left back in the Company and it was found that in GL12285023, one item (chain of 20 gms.) was missing and the packet was also tampered and also another two packets bearing GL11724412 and GL16209898 were found tampered. The internal investigation and audit of the IIFL showed that accused Lala Amrut Sagar Ray and Ms. Nilima Lenka (gold appraisers), who were the custodians of the gold ornaments by abusing their position in the Company have committed a host of illegal activities beyond their jurisdiction. It is also alleged that the above accused persons in connivance with the petitioner and accused Kabi Prasad Pradhan (gold appraiser) siphoned off the money, which were received from the customers towards the closure of their loan accounts and there was a deliberate omission on the part of the above employees while making their entries in the system. In the F.I.R., the informant has mentioned the details of some customers, whose loan accounts have been closed, but still active in the system wherein loan closure amount has not been entered have been mentioned in a tabular form, which is as follows :

| Loan A/c. No. | Name of the customer | No. of accounts | Loan amount in Lacs |
|---|---|---|---|
| GL12723396<br>GL14997587 | Alok Sahu | 2 | 5.7 |
| GL15462806 | Preeti Swarup Lenka | 1 | 1.2 |
| GL13479171 | Ranjit Kumar Sen | 1 | 0.2 |
| GL13314018 | Ashok Samanta | 1 | 0.45 |
| GL14087466 | Abdul Aziz Khan | 1 | 0.16 |
| GL15924863 | Mantu Kumari Sahoo | 1 | 0.35 |
| GL13642026<br>GL13642727 | Chitta Ranjan Sahoo | 2 | 2.49 |
| GL14726607 | Bata Krushna Behera | 1 | 0.5 |

It is also alleged in the F.I.R. that the aforementioned accused persons have also taken away the gold ornaments from the vaults and again re-pledged in the Company in the name of some other customers by creating fake loan accounts to show artificial growth in business, which is stated in the following tabular form:

| Loan Ac No | Date of loan | Name of customer | Item which are taken for new loan | Weight ornament | New loan Ac No | Date of loan | Name of customer |
|---|---|---|---|---|---|---|---|
| GL12485257 | 2019921 | Harekrushna Sahoo | 2 Bangles | 26.09 | GL15560895 | 9/14/2020 | Pradip Kumar Ray |
| GL13683170 | 20200207 | Anisha Khatoon | 1 Bracelet | 34.8 | GL1614810 | 11/4/2020 | Manoj Jee |
| GL12477765 | 20190921 | Kayfi Khan | 1 Locket | 6.3 | GL14198077 | 4/30/2020 | Sk. Israil |
| GL12892848 | 20191111 | Ambika Maharana | 1 Locket | 4.2 | GL16140734 | 11/4/2020 | Sahaba Khan |
| GL12175191 | 8/16/2019 | Adita Das | Ring-2 | 9.6 | GL15693648 | 9/23/2020 | Suryaprakahs Agrawal |
| GL12831743 | 11/4/2019 | Dipak Kumkar Sahu | Ring-1 | 3.3 | GL12751752 | 10/22/2019 | Bedudhar Moharana |
| GL13245524 | 12/20/2019 | Rojalini Das | Ring-1 | 3.9 | GL1594870 | 10/16/2020 | Dipak Kumar Sahoo |
| GL15608106 | 17-09-2020 | Sayadasagar Alli | Necklace-1, Chain-3 | 62.9 | GL15637244 | 9/19/2020 | Santoshi Sahoo |
| GL12452165 | 19-09-2019 | Bishnupriya Parida Samant | Nacklece-1 | 15.1 | GL15608106 | 9/17/2020 | Sayad Asakar Alli |

The informant has also stated the details of the ornaments which were illegally removed from the vaults of the Company and pledged in Manappuram Finance Ltd. and seized by the police from

Manappuram and matched with the active packets of the Company, which are as follows:

| Prospect No | Date of pledge | Name of customer | Loan amount | Prospect No of Manappuram | Date of pledge | Name of customer |
|---|---|---|---|---|---|---|
| GL15435576 | 5/9/2020 | Saroj Kumar Prusty | 269598 | 70045475 | 13/10/2020 | Mr. Lalit Soni |
| GL14175288 | 21/03/2020 | Dhananjay Dagara | 265000 | 70045477 | 13/10/2020 | Mr. Lalit Soni |
| GL14502999 and Parent GL 12785904 | 18/06/2020 | Sonali Lenka | 156000 | 70045180 | 17/09/2020 | Mr. Debasish Hazra |
| GL14055969 | 12/3/2020 | Shyam Sunder Ghosh | 245214 | 70042882 | 20/12/2019 | |
| GL15625474 | 18/09/2020 | Dhananjay Kumar Dagara | 289919 | 70042696 | 2/11/2019 | Mr. Debasish Hazra |
| GL14061128 | 12/3/2020 | Nikhil Kumar Dey | 253834 | 70042723 | 2/12/2019 | Mr. Rajkishore Sahoo |
| GL13460193 | 16/01/2020 | Rabindra Kumar Sahoo | 129250 | 70043449 | 13/02/2020 | Mr. Nityananda Sahoo |
| GL15518284 | 11/9/2020 | Ramakant Das | 560000 | 70039898 | 5/3/2020 | Mr. Hemanda Mohanty |
| GL14053336 | 12/3/2020 | Saroj Kumar Prusty | 243000 | 70044777 | 14-08-2020 | Mr. Bapuni Nayak |
| GL15560895 | 14-09-2020 | Pradip Kumar Ray | 226856 | 70089904 | 5/2/2020 | Mr. Lipun Behera |
| GL13440424 | 13-01-2020 | Rashmirekha Pradhan | 359809 | 70039156 | 15-01-2019 | Mr. Nlamani Saha |
| GL13348236 | 3/1/2020 | Ariph Khan | 127200 | 70040673 | 17-05-2019 | Mr. Saroj Prusty |

It is stated in the F.I.R. that the aforesaid accused persons are guilty of tampering the audited packets and removing the gold and keeping empty gold pouches instead of actual packets with ornaments in tray for tallying the counting of packets at the time of audit. It is also alleged that accused Lala also misused the auditor Login Id and Password and he himself paused/updated the tare weights of packets, which were not available in the vault by using the auditor tablet during their absence. It is also revealed that from active loan accounts, the gold ornaments were taken away and new loan accounts were created when they could not achieve the branch target. Apart from the above, the CCTV footage and security systems were manually manipulated by them, which were found out during the course of investigation, which indicates the involvement of the above accused persons in the commission of the crime.

3. On the basis of the first information report, Lalbag P.S. Case No. 321 of 2020 was registered on 29.12.2020 under sections 420, 406, 409, 467, 468, 471, 379, 120-B, 34 of the Indian Penal Code.

During course of investigation, it transpired that IIFL was having one branch located at Nayasarak under Lalbag Police Station. On 19.11.2020 at about 9.58 a.m., while four employees of the Company, namely, Mr. Kabi Prasad Pradhan, Nilima Lenka, Lala Amrut Sagar Roy and D. Rajesh were opening their gold loan branch office along with their security guard Basant Kumar Behera and housekeeping staff Meena Behera, all on a sudden four unknown robbers whose faces were covered with mask, entered inside the Company and forcefully closed the collapsible gate and shutter of the Company from inside. After entering inside the Company, the robbers took aside their staff namely Nilima Lenka and Lala Amrut Sagar Roy at gun point and physically assaulted them by means of kick and back push. When Nilima Lenka tried to hide the vault room keys, one of the robbers pressed her face and dragged her towards vault room wall. Another office staff namely Kabi Prasad Pradhan, D. Rajesh, security guard Basant Kumar Behera and house keeper Meena Behera were forcibly locked inside the toilet of the Company by the robbers. Thereafter, the robbers took Nilima Lenka and Lala Amrut Sagar Roy at gunpoint and forcibly made them open the vault room and the vault using keys which were kept by them separately for security purpose. Eventually within ten minutes of operation and taking the gold ornaments and cash in a bag from the Company, the robbers disappeared from the spot availing their bikes after snatching away the mobile handsets of all the Company staff as noted above and locked the entrance shutter of the office from outside. In this connection basing on the written report of Sri Tapas Ranjan Swain, Territory Manager of IIFL, Lalbag P.S. Case No.294 dated 19.11.2020 under section 395 of the Indian Penal Code and sections 25 and 27 of the Arms Act was registered and investigation commenced. After the commencement of the investigation, the authorities of IIFL made discrete enquiry into the lapses incurred during the process and made an audit of their Company and they could able to reach at a conclusion regarding the crime involving huge cash and gold. After thorough assessment, the Area Manager of IIFL (informant of this case) lodged the F.I.R highlighting all relevant points of their loss and the crime which occurred in the Company.

Investigation further transpired that, prime accused Lala Amrut Sagar Roy was working in IIFL since 2011 as gold appraiser along with his staff Nilima Lenka, Kabi Prasad Prachan, D. Rash, Basant Kumar Behera, Meena Behera and others. Since three to four years back, he started misappropriation of the mortgaged gold of general public at the Company and he had put some of such gold in Manappuram Finance gold loan branches. By pledging gold in another company of B.K. Road Branch initially through his brother and later by

Pitambar Sahoo at Choudhury Bazar branch, he had taken huge amount of loan for his personal gain and also some gold had been sold in the local market. All the employees except new entrants like D. Rajesh, security guard and housekeeping staff Mina Behera of the Company, hatched criminal conspiracy to cover up their misdeeds and Lala took the lead. On such backdrop, as the misappropriation became huge and the accused Lala Amrut Sagar Roy was not in a position to manage the audit of his company, he choreographed a plan with Ranjan Kumar Behera, Nilima Lenka and others to arrange a team to manage the misappropriation done by him. Ranjan Behera, who is a religious ideologue of accused Lala Amrut Sagar Roy arranged four of his supporters, namely, accused Raj Kishore Sahoo, Pabitra Kumar Behera, Prakash Kumar Sahoo and Santosh Bhoi and they executed the dacoity from the Company in respect of gold and cash from the vault of the Company kept in polythene packet having IIFL label mark on the point of toy gun. Some of the dacoity gold with IIFL label packets (Polythene Bags) and cash were seized from the exclusive possession of accused persons in presence of local witnesses during investigation of Lalbag PS Case No.294/2020.

The investigation revealed that Company is manned by one Branch Manager and some gold appraisers, valuers and others. In the higher hierarchy, it is controlled by one territory manager and above him remains one Area Manager, who looks into the normal functioning of the institution. Though some works were getting done in the

Company on offline mode and some registers and records are maintained in the Company, but it was running almost in online mode. It was a loan giving institution against deposit of gold and taking interest from the public. When the customers moves to the Company, he has to contact the Customer Care Executive and later he is to be handled by one appraiser/valuer and later if loan is done by the customer, his photograph is to be taken, mobile numbers are shared and the photograph of ornaments are also taken and the entire things are transmitted to the Head Office by the Branch Manager and sanction is granted to the loan and cash is disbursed to the customer. The vault of the Company is maintained by two employees and its key is rotated among them in every two weeks. All security gadgets had been installed in the Company like CCTV collapsible at audit mechanism etc. During investigation, it was found that the employees of the said Company could able to breach all the security aspects on one pretext or the other. Nobody could observe the deficit in the surveillance system and the employees of the said Company could able to think the Company to be their parental and personal property and made access to the vault frequently and siphoned everything from the vault which were pledged in the Company. First they breached the security of the vault by complaining the opening of the vault manually instead of the OTP messages and the company authorities agreed to the same and manual operation started and by that the employees could be able to frequently enter into and out from the vault. Later the kingpin Lala

Amrut Sagar Roy managed the vaults himself and all the employees supported him. Though rotation of the key was found on record but physically Lala and Nilima handled everything personally. This gave more scope to the accused persons to take out the pledged gold from the vault to outside. The petitioner as the Branch Manager of the Company did not concentrate on the official functions of the Company and he relied on accused Lala Amrut Sagar Roy. The petitioner Branch Manager had not only failed to discharge his official duty but being gained over by Lala Amrut Sager Roy, he supported the accused persons. Nilima Lenka was also aware of everything what was going on in the Company but she was taking her own share and remained silent and similar things happened to all other staff except the house keeper, sweeper, guard and newly appointed D. Rajesh. These employees hatched criminal conspiracy and siphoned off the pledged gold from the vault of the Company. Lala could be able to manage the Company by committing theft from the vault and pledged the same in the Company in the name of some other staff and close friends and shown the company more number of loan accounts and shown good business. First, he did the same for the IIFL Company to show business and later when nobody could notice the same, he started pledging the gold in other branches with the help of his old customers and opened accounts at other branches. As gold appraisers, all the employees had the responsibility to strengthen business of the company and when Lala managed to open new accounts, nobody opposed him. Though there was a strong audit system in the company, nobody recognized the loopholes in the process and the illegal people became more strengthened and later they started pledging the gold of the Company in other branches and as Lala was working at Manappuram Finance earlier and his brother was also at Manappuram Finance, B.K. Road Branch earlier, he started committing theft of the pledged gold from the vault of the Company and pledged it at Manappuram Finance Ltd., B.K. Road branch and took loan against each gold loan and thereby earned huge money in the process. He also transferred huge quantity to other staff of the Company and that to his associates against whom, he pledged loan. He could cunningly manage the photograph and phone number of the customers and diverted the same in his favour. One Ranjan Behera of Bilahat, a close friend of accused Lala was acting as his guru and used to help him during his problems. At times, he also managed the audit team with the help of Ranjan Behera. When his brother Lala Ranjan Roy got transferred from the Manappuram Finance Ltd., B.K. Road Branch, Lala approached the new Branch Manager Pitambar Sahoo in the pretext of making new loans and business for his branch and convinced him to help in this unlawful act and Pitambar Sahoo also helped him and both of them conspired together, pledged the loan committing theft from the Company. Even Pitambar Sahoo also pledged the loan in favour of his mother and brother. In this process, huge EMI for loan was to be paid every month and when it became difficult for the management of the Company and being scared to be caught during the audit, accused Lala had got no option but to contact Ranjan Behera to come out from this. They both i.e. Lala and Ranjan and one Raj Kishore Sahoo, Harmohan Das conspired together in a feast made at Baideswar temple at Choudwar and there they decided to commit dacoity in the Company and to show the misappropriated gold to have been taken away by the dacoits. Lala also moved to Bilahat area and interacted with other stake holders of the dacoity team and choreographed the plan. In that plan, the dacoits again congregated at the 'Nanda' factory of Ranjan Behera at Bilahat in the evening hours of 18.11.2020 and got prepared. Ranjan gave his bike to Raj Kishore and Pabitra brought his bike and they both tampered the number plates of their bikes using black tapes and contacted each other and confirmed it to Lala. On getting the confirmation, Lala had taken huge quantity of gold from the vault much earlier to the occurrence and kept it at another place in anticipation of dacoity as he was aware that others would be benefited in the process and he might not get anything after dacoity. As per their planning, accused Lala asked them to come to Cuttack and provide them a plastic gun and the team of four persons, namely, Raj Kishore Sahoo, Pabitra Kumar Behera, Prakash Kumar Sahoo and Bapi @ Santosh Bhoi reached at Cuttack and committed the crime in two bikes being on masks and also departed from Cuttack. Ranjan Behera, who was the mastermind of the dacoity, was waiting nearby and assured all others to come to their help in case of any kind of necessity. Later everyone took their small share and deposited the lion's share with Ranjan Behera. Later these robbed booties were recovered from each of the dacoits during investigation of Lalbag P.S. Case No.294 of 2020 and also during interrogation, they disclosed about the earlier misappropriation. On that aspect, investigation focused the entire things which come to light. In course of committing criminal breach of trust in the Company, the employees of the company associated themselves with the accused persons, namely, Lalit Kumar Soni, Saroj Kumar Prusty, Harmohan Das, Debasis Hazra, Nilamani Saha, Pitambar Sahoo and others. It was also established that accused Lala Amrut Sagar Roy and Nilima Lenka had taken the ornaments from active accounts of the Company and those were pledged at Manappuram Finance by security guard, housekeeping staff, their friends and relatives. The accused employees of the Company committed the crime in the following manner i.e. (i) ornaments were handed over to customers and the amount received from customers for closure of their gold loan accounts were misused by them without closing the loan account in the system and the amount misappropriated by the accused employees; (ii) ornaments from the packets were used for new loans whenever unable to achieve the target. Partly ornaments were also taken from the existing packets by tampering and re-pledging in the Company in the name of different customers; (iii) ornaments were taken from the existing packets by tampering and re-pledging in other branches like Manappuram Finance Ltd in the name of different customers to achieve the target of business in the Company; (iv)

Keeping empty gold pouches instead of actual packets with ornaments in tray for tallying the accounts of packets at the time of audit. Accused Lala Amrut Sagar Roy misused the auditor login ID and password and he himself punched/updated the tare weights of packets which were not available in the vault by using auditor TAB when the auditor went out for lunch. The procedure of creation of OTP for opening of vault was not in operational since January 2020. The petitioner being the Branch Manager was not holding the vault key except four times in a year and both vault keys and vault operated by the accused Lala Amrut Sagar Roy, Nilima Lenka and they did not allow any other staff to operate the vault. All loan related activities were handled by them without allowing other staff in the Company. An internal audit of the said Company was conducted after the incident and the auditor submitted a report making observations as mentioned above. On completion of investigation, the Investigating Officer submitted preliminary charge sheet against the petitioner and others under sections 420, 406, 409, 467, 468,471,379/120-B/34 of the Indian Penal Code keeping the investigation open.

4. The petitioner earlier moved for bail before this Court in BLAPL No. 3822 of 2021 and after hearing the learned counsel for both the parties and on perusal of the case records, this Court vide order dated 26.10.2021 taking into account the nature and gravity of accusation, the manner in which the crime has been committed in a preplanned and organized manner and thereby the Company has

suffered huge financial loss and innocent persons were cheated and since the petitioner seemed to have placed a pivotal role in the commission of offences alleged as per charge sheet and further taking into account the fact that the investigation was under progress and there was reasonable apprehension of tampering with the evidence, in the larger interest of public and State, rejected the application for bail.

5. Even though after rejection of the earlier bail application of the petitioner on 26.10.2021, 2nd charge sheet was submitted on 19.11.2021 against some of the co-accused persons under sections 420, 406, 409, 467, 468, 471, 379, 120-B read with section 34 of the Indian Penal Code, but the investigation was kept open for collection of evidence and at that stage the petitioner again moved the Court below, which was rejected on 09.02.2022 as aforesaid.

During course of hearing of the bail application, as per order dated 01.12.2022, learned counsel for the State has produced written instruction dated 12.12.2022 of the Inspector in-charge of Labag police station wherein it is mentioned that the investigation of the case is in progress and collection of more evidence is going on and soon after the completion of investigation, final charge sheet would be submitted without any delay. Evidence like documents pertaining to gold deposits by customers, detailed list of the victims and their examination, audit reports, collection of specimen handwriting of the accused persons and bank account statements etc. are to be collected and more victims are to be examined for collection of further evidence and further documents need to be seized from the victims.

6. Mr. Yasobant Das, learned Senior Advocate appearing for the petitioner contended that the petitioner was the Branch Manager of the Company and he is in judicial custody since 16.12.2020 and as such, he has remained in custody for two years and so far as the petitioner is concerned, the investigation has been concluded and charge sheet has been submitted though the investigation is pending for some other purposes. It is further submitted that the offences are triable by Magistrate and the accusation against the petitioner may be relating to dereliction in official duties, but the main allegation is against the co-accused persons Lala Amrut Sagar Roy and Nilima Lenka and neither there is chance of absconding nor tampering with the evidence. It is further submitted that there was no recovery of any ornament from the petitioner or that the petitioner was profited personally on account of his alleged connivance with the co-accused persons and even if some amount has been allegedly transferred from the account of the co-accused Lala Amrut Sagar Roy to the account of the petitioner through IMPS on different dates, but since cash of Rs.82,000/- (rupees eighty two thousand) has been seized from the house of the petitioner on 24.11.2022, gold and silver ornaments from his locker in UCO Bank so also one gold chain, one ear ring and one ring from the possession of the petitioner on the date of his arrest, which were worn by the petitioner but in the month of May 2021 police returned the seized cash and ornaments, which were seized from locker of the wife of the

petitioner and in the month of August 2022, police returned the ornaments to his wife which were worn by the petitioner, therefore, the Investigating Agency was also satisfied that such money or such ornaments were no way concerned with the case in hand. It is further submitted that the petitioner has been released on bail in the connected case i.e. Lalbag P.S. Case No. 311 of 2020 for offences punishable under section 420, 409, 408, 403, 120-B/34 of the Indian Penal Code in BLAPL No. 441 of 2021 as per order dated 26.04.2021 wherein similar allegations were made and therefore, the bail application may be favourably reconsidered.

Reliance was placed on the decision of the Hon'ble Supreme Court in the case of **Satender Kumar Antil -Vrs.- Central Bureau of Investigation and another reported in 2022 SCC OnLine SC 825**, **Sanjay Chandra -Vrs.- Central Bureau of Investigation reported in (2012) 1 Supreme Court Cases 40**, **Laloo Prasad @ Laloo Prasad Yadav -Vrs.- State of Jharkhand reported in (2002) 9 Supreme Court Cases 372** and **Arnesh Kumar -Vrs.- State of Bihar reported in (2014) 58 Orissa Criminal Reports (SC) 999.**

7. Mrs. Susamarani Sahoo, learned Addl. Standing Counsel for the State so also Mr. A.K. Choudhury, learned counsel for the informant, on the other hand, vehemently opposed the prayer for bail and submitted that there is no change in the circumstances after rejection of the earlier bail application on 26.10.2021 and the investigation is still under progress and at this stage, if the petitioner is

enlarged on bail, he is likely to derail the investigation by tampering with the evidence and there would be further delay in completion of investigation and therefore, at least till completion of investigation and examination of material witnesses, the petitioner should not be enlarged on bail.

8. Economic offences are always considered as grave offences as it involves deep rooted conspiracy and huge loss of public fund. Such offences are committed with cool calculation and deliberate design solely with an eye on personal profit regardless of the consequence to the community. In such type of offences, while granting bail, the Court has to keep in mind, inter alia, the larger interest of public and State. The nature and seriousness of an economic offence and its impact on the society are always important considerations in such a case and those aspects must squarely be dealt with by the Court while passing an order on bail applications. (Ref: **State of Gujarat -Vrs.- Mohanlal Jitamalji Porwal and others reported in (1987) 2 Supreme Court Cases 364, Y.S. Jagan Mohan Reddy -Vrs.- CBI reported in (2013) 7 Supreme Court Cases 439 and Aswini Kumar Patra -Vrs.- Republic of India reported in (2021) 84 Orissa Criminal Reports 1**.

At this stage, it would be profitable to discuss the ratio laid down in the judgments referred to by the learned counsel for the petitioner.

In the case of **Satender Kumar Antil** (supra), while dealing with economic offences not covered by Special Act, taking into account the ratio laid in the case of **P.Chidambaram - Vrs.- Directorate of Enforcement reported in (2020) 13 Supreme Court Cases 791**, it was held that that an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another and therefore, it would not be proper on the part of the Court to categorize all the offences into one group and deny bail on that basis. In the case of **P.Chidambaram** (supra), it was held as follows:-

> "23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the Rule and refusal is the exception so as to ensure that the Accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the Accused. One of the circumstances to consider the

gravity of the offence is also the term of sentence that is prescribed for the offence the Accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a Rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the Accused to stand trial."

In the case of **Sanjay Chandra** (supra), it was held as follows :-

"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson."

In the case of **Laloo Prasad @ Laloo Prasad Yadav** (supra), it has been held as follows:-

"7. The most serious of the offences now pitted against the Petitioner is Section 13 of the Prevention of Corruption Act punishable with a maximum sentence of imprisonment for seven years. Having considered the merits of the case including the fact that Petitioners were in jail for a period of more than six months by now (which partly includes the pre-trial detention in other connected cases also) we do not think that further detention of them as pre-trial prisoners would be of any necessity in this case."

In the case of **Arnesh Kumar** (supra), it has been held as follows:-

"8. Law Commissions, Police Commissions and this Court in a large number of judgments emphasized the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. Police officers make arrest as they believe that they possess the power to do so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. Despite this legal position, the Legislature did not find any improvement. Numbers of arrest have not decreased. Ultimately, the Parliament had to intervene and on the recommendation of the 177th Report of the Law Commission submitted in the year 2001, Section 41 of the Code of Criminal Procedure (for short 'Code of Criminal Procedure), in the present form came to be enacted. It is interesting to note that such a recommendation was made by the Law Commission in its 152nd and 154th Report submitted as back in the year 1994. The value of the proportionality permeates the amendment relating to arrest. As the offence with which we are concerned in the present appeal, provides for a maximum punishment of imprisonment which may extend to seven years and fine.

9. An accused arrested without warrant by the police has the constitutional right Under Article 22(2) of the Constitution of India and Section 57, Code of Criminal Procedure to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey. During the course of investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is authorised by the Magistrate in exercise of power Under Section 167 Code of Criminal Procedure. The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Our experience tells us that it is not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier manner. Before a Magistrate

authorises detention Under Section 167, Code of Criminal Procedure, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested is satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that condition precedent for arrest Under Section 41 Code of Criminal Procedure has been satisfied and it is only thereafter that he will authorise the detention of an accused. The Magistrate before authorising detention will record its own satisfaction, may be in brief but the said satisfaction must reflect from its order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making inducement etc., the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording its satisfaction in writing that the Magistrate will authorise the detention of the accused. In fine, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant and secondly a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny.

11. Aforesaid provision makes it clear that in all cases where the arrest of a person is not required Under Section 41(1), Code of Criminal Procedure, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police office is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged Under Section 41 Code of Criminal Procedure has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

12. We are of the opinion that if the provisions of Section 41, Code of Criminal Procedure which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of

> cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 Code of Criminal Procedure for effecting arrest be discouraged and discontinued."

9. Adverting to the contentions raised by the learned counsel for the respective parties and on perusal of the materials available on record, no doubt it prima facie appears that the petitioner while working as Branch Manager of the Company has failed to discharge his official duties properly and has not followed the guidelines as per the branch manual issued by the IIFL at the time of sanction of gold loan in favour of the customers. The petitioner was supposed to perform the duties such as safe custody of vault keys, jewellery and cash, supervise the duties performed by GA and CCE, release of jewellery in case of repayment of loan, maintenance of vault cash registers and cash denomination registers, perform surprise cash verification, ensure branch security systems operational. He was to report the issue, if any and ensure that there is no breach of security protocols, conduct customer point verification for more than two lakhs to five lakhs, report any irregularity of serious nature to the Area and Territory Manager, test security alarm system on a fortnightly basis and submit the report to the Area Manager. He was also responsible for adhering to high ethical standards and complying with all the laid down processes/ policies of IIFL, KYC adherence, correct valuation and maintenance of

100% process compliance at the branch. He was also responsible for maintaining and displaying of statutory abstracts and registers as per guidelines and compliance requirements and also responsible for maintaining quality portfolio by tracking and controlling the threshold IRR and prompt resolution of queries and complaints pre and post loan disbursal.

The materials on record further prima facie indicate that the petitioner being gained over by the co-accused Lala Amrut Sagar Roy and Nilima Lenka was neither taking any action against them nor stopping the illegal activities going on in his branch. The petitioner allowed both the vault keys and vault to be operated by the aforesaid two co-accused persons. Even after receiving the amount from the customers for closure of their gold loan accounts, the amounts were misappropriated and loan accounts were not closed. The ornaments were taken out by tampering the packets and those were re-pledged in Nayasarak Branch in the names of different customers and in some cases the ornaments were pledged in other branches like Manappuram Finance Ltd. and empty gold pouches were kept instead of actual packets of gold ornaments. The statements of the witnesses and documents seized during the course of investigation prima facie make out the offences alleged against the petitioner and the entire activities seems to have been carried out in a very calculated and organized manner for which the Company not only suffered huge financial loss but the reputation of the Company was also affected in the eyes of public.

In view of the post which the petitioner was holding at the relevant point of time in the Company and the duties assigned to him as a Branch Manager, I am of the prima facie view that the entire illegal activities committed by the co-accused persons could not have been possible without the active connivance with the petitioner.

10. It is the settled law that detailed examination of evidence and elaborate discussion on merits of the case should not be undertaken while adjudicating a bail application. The nature of accusation, the severity of punishment in case of conviction, the nature of supporting evidence, the criminal antecedents of the accused, if any, reasonable apprehension of tampering with the witnesses, apprehension of threat to the witnesses, reasonable possibility of securing the presence of the accused at the time of trial and above all the larger interests of the public and State are required to be taken note of by the Court while granting bail.

This Court as per order dated 01.12.2022, asked the learned S.D.J.M. (Sadar), Cuttack to submit a report as to why the trial of the persons against whom charge sheet has already been submitted have not commenced as yet, particularly in view of their detention period.

The learned S.D.J.M. (Sadar), Cuttack has submitted his report dated 05.12.2022 wherein it is mentioned that whenever the Court tried to send the original case records to the copying section for preparation of police papers, one of the accused persons filed a bail application individually and after rejection, the original case record is called for by the learned Sessions Judge and most of the time, the part file is pending before him for the purpose of remand of the accused persons for which the Court was unable to prepare the police papers within reasonable time and one of the co-accused Lalit Kumar Soni is on interim bail and the case is to be tried by learned Chief Judicial Magistrate, Cuttack and in the meantime, the Court managed to prepare police papers and the case was posted to 12.12.2022 for appearance of the said co-accused Lalit Kumar Soni and supply of police paper awaiting final form. The learned S.D.J.M. has undertaken to submit the case record before the learned Chief Judicial Magistrate, Cuttack after supplying police paper for the purpose of trial, in case the original case record is available with the Court on the date fixed.

In view of the report submitted by the learned S.D.J.M., it seems that the Court has not kept in view the observation made by the Hon'ble Supreme Court in the order dated 25.04.2018 in the case of **Asian Resurfacing of Road Agency P. Ltd. and others -Vrs.- Central Bureau of Investigation reported in (2018) 16 Supreme Court Cases** that if the trial Court record is summoned by higher Courts, the trial Courts may send photo copy/scanned copy of the record and retain the original so that the proceedings are not held up. Be that as it may, this Court expects that after supply of police paper to the petitioner and other co-accused persons against whom charge sheet has already been submitted, the original case records shall be submitted to the learned Chief Judicial Magistrate, Cuttack at an earliest to progress with the trial of the case and in case any intimation is received from the higher Court for adjudication of the bail application of any accused, the learned S.D.J.M. or the learned Chief Judicial Magistrate, Cuttack shall henceforth send one set of police paper already prepared to the concerned Court and not the original case records so that there would be no hindrance to the smooth progress of the trial. The learned Chief Judicial Magistrate, Cuttack shall do well to expedite the framing of charge, obtain a list of witnesses to be examined from the learned Public Prosecutor in charge of the case and summon the material witnesses at the first instance, take effective steps to ensure the attendance of the witnesses and examine them on day to day basis. In view the importance of this case, the learned Chief Judicial Magistrate, Cuttack shall fix a particular time slot on each date so that the mandate of section 309 of Cr.P.c. can be adhered to. The learned trial Court shall take all possible steps to stop dilly-dallying or shilly-shallying attitude adopted either from the side of the prosecution or the accused and ensure that the constitutional right of speedy trial of the accused is not flouted causing mockery of the trial. Unnecessary lengthy cross-examination by different set of defence counsel to the witnesses to make it a gallery show should be regulated by the learned trial Court keeping in view the provisions under sections 146, 148, 150, 151, 152 and 165 of the Indian Evidence Act.

11. In view of the foregoing discussions, in absence of any substantial change in the circumstances after rejection of the earlier

bail application on merit and particularly since there is strong prima facie case against the petitioner relating to his involvement in the commission of grave economic offence, I am not inclined to reconsider his prayer for bail on merit.

Needless to say that after perusing the status of investigation submitted by the Inspector in-charge of Lalbag Police Station, since the case was registered on 29.12.2020 and in the meantime, almost two years is going to be elapsed and two charge sheets have also been filed, the Investigating Officer shall do well to conclude the investigation and close the same at an earliest without keeping it pending for an indefinite period.

Accordingly, the bail application stands rejected. However, the petitioner is at liberty to renew the prayer for bail after examination of the material witnesses in the learned trial Court.

A free copy of the order be handed over to the learned counsel for the State for onward communication to the Investigating Officer.

A copy of the order be sent to the learned S.D.J.M. (Sadar), Cuttack so also the learned Chief Judicial Magistrate, Cuttack

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**S.K. Sahoo**
**Judge**

Orissa High Court, Cuttack
The 20th December 2022/PKSahoo