ORISSA HIGH COURT: CUTTACK

BLAPL No. 1419 of 2022,
BLAPL No. 1586 of 2022 &
BLAPL No. 1677 of 2022

(Applications under Section 439 of Cr.P.C.)

BLAPL No. 1419 of 2022

AFR Narendra Nayak ..... Petitioner

-Versus-

State of Odisha ..... Opp. Party

BLAPL No. 1586 of 2022

Birendra Kumar Pattanayak ..... Petitioner

-Versus-

State of Odisha ..... Opp. Party

BLAPL No. 1677 of 2022

Prakash Kumar Behera ..... Petitioner

-Versus-

State of Odisha ..... Opp. Party

Advocate(s) appeared in these cases:-

For Petitioners	:	M/s. D.P. Mohanty, S.C. Mohanty, P.K. Swain, P. Mohanty, P.K. Sahoo & M. Pal, Advocates [in **BLAPL No.1419 of 2022**] Mr. D.P. Dhal, Sr. Advocate along with M/s. B.S. Dasparida, K. Mohanty, & A. Ray, Advocates.

Mr. Milan Kanungo, Sr. Advocate
along with Mr. Sidhartha Das, Adv.
BLAPL No. 1677 of 2022

M/s. R.C. Swain, B.B. Swain &
T. Swain, Advocates. [**For informant**]

For Opp. Party : Mr. S.K. Mishra,
Addl. Standing Counsel

CORAM
JUSTICE SASHIKANTA MISHRA

ORDER
29th June, 2022

SASHIKANTA MISHRA, J. All these bail applications have been filed by the accused persons in EOW, Bhubaneswar P.S. Case No.16 of 2021 corresponding to C.T. Case No. 6836 of 2021 pending before the learned S.D.J.M., Bhubaneswar for the alleged commission of offence under Sections 420/467/468/471/120-B of IPC. The petitioners are in custody since 24.01.2022.

2. Since the facts of all the cases are similar, all the bail applications were heard together and are being disposed of by this common order.

3. Heard Mr. D.P. Mohanty, learned counsel for the petitioner- Narendra Nayak in BLAPL No. 1419 of

2022; Mr. D.P. Dhal, learned Senior Counsel appearing along with Mr. B.S. Dasparida, learned counsel for the petitioner-Birendra Kumar Pattanayak in BLAPL No.1586 of 2022; Mr. Milan Kanungo, learned Sr. Counsel appearing along with Mr. S. Das, learned counsel for the petitioner- Prakash Kumar Behera; Mr. R.C. Swain, learned counsel for the informant and Mr. S.K. Mishra, learned Addl. Standing Counsel for the State.

4. The facts of the cases are that on the basis of a complaint lodged by one Prasanta Kumar Mohapatra on 08.12.2021 before the Superintendent of Police, Economic Offences Wing (EOW), Bhubaneswar, EOW P.S. Case No. 16 of 2021 was registered. The informant alleged that he had initially approached the Bapujinagar Branch of Punjab National Bank for availing a loan and met the Chief Manager, Birendra Pattanayak for such purpose. As advised, he met the Senior Manager, Sri Srikanta Prusty and Field Officer (Branch Manager), Narendra Nayak and on their advice handed over the documents relating to two properties owned by him as mortgage for the said loan. He also submitted the form of declaration, affidavit and an

agreement of guarantee in which his three brothers had also signed. A sum of Rs.10 lakhs was credited to his account. Subsequently, he came to know that a loan of Rs.368,780,30.98 had been sanctioned in favour of a firm named M/s. Lingaraj Enterprises by practicing fraud and by utilizing his property documents. In course of investigation, it came to light that M/s. Lingaraj Enterprises is a fictitious entity and that the bank officials had conspired among themselves to sanction the loan with dishonest intention, out of which Rs.10 lakhs was credited to the account of the informant only to create a belief that his application for loan had been sanctioned. It was further revealed that there was diversion of funds from the loan amount to middlemen/firms to the tune of lakhs. The amount of Rs.10 lakhs was credited to the account of the informant through two firms, namely M/s. Ubique Multitech Pvt. Ltd. and M/s. Aziel Trading and Marketing Pvt. Ltd., of which the accused, Prakash Behera (BLAPL No. 1677 of 2022) was the Director/Proprietor.

5. Mr. D.P. Dhal, learned Sr. Counsel has forcefully contended that the entire case has been falsely

foisted against the petitioners at the instance of the informant, who, having availed the loan had become a defaulter for which action has been taken against him under the SARFAESI Act. It is further argued that the loan was sanctioned on the basis of documents furnished by the informant strictly as per the norms of the bank and after observing all necessary formalities, such as, report of the Chartered Accountant, report of the title by advocate, valuation of the property by the empanelled engineer of the bank and vetting of the loan documents by the Bank's advocate. A bare perusal of the mortgage agreement would show that as many as six persons including the informant have signed on it and the signatures are endorsed in such manner that it is practically not possible to forge the signature of the informant alone. Significantly, no other signatory including the three brothers of the informant have come forward to make any such complaint. That apart, the role of the informant himself is doubtful because if, according to him, he had supplied the documents of his properties for a loan of Rs.10 lakhs only, there is no valid reason as to why he would offer properties, the valuation of which runs into crores being to the tune of Rs.140 lakhs and Rs.120 lakhs. It militates against ordinary prudence that such valuable properties would be offered as mortgage for a loan of Rs.10 Lakhs only rather, the above conduct strongly suggests that the informant is the main player behind the said M/s. Lingaraj Enterprises and the loan having become NPA with legal action being initiated against him, he has foisted the present case only to wriggle out of his liability to the Bank.

6. Mr. D.P. Mohanty while adopting the arguments made by Mr. Dhal has added that in so far as the role of the petitioners is concerned, they being bank officials have acted as per the banking norms and at best it can be treated as an administrative lapse, if at all. The bank officials have also been departmentally proceeded with for such lapses but no criminal liability as such can be fastened against them.

7. Mr. Milan Kanongo, learned Senior Counsel argues that the only allegation against the petitioner is that a sum of Rs.10 lakhs was transferred to the account of the informant being routed through the accounts of his

companies and there is no evidence to show that he had been personally benefited by the alleged transaction.

8. As a common argument all the three learned counsel have forcefully contended that there is absolutely no proof of any monetary gain having accrued to any of the petitioners in the alleged fraudulent transaction, rather, the facts unequivocally suggest that the case has been foisted by the informant only to escape the penal consequences of non-payment of the loan dues by him.

9. Mr. S.K. Mishra, learned Addl. Standing Counsel has vehemently opposed the prayer for bail by submitting that without the active connivance and participation of such senior bank officials, the transaction in question could not have materialized. Moreover, the involvement of the accused- Prakash Kumar Behera is clearly evident from the electronic transfer of funds. It is further submitted by Mr. Mishra that because of such fraudulent activities, the bank has been put to loss to the tune of nearly Rs.5 crores. Since this is an economic offence involving huge amount of money and there is prima facie proof of involvement of all the three

petitioners, they should not be released on bail, more so as investigation has been kept open despite submission of charge sheet.

10. I have heard the rival submissions and have perused the materials on record including the instructions furnished by the I.O. to the office of the learned Advocate General carefully. The facts relating to sanction of loan to M/s. Lingaraj Enterprises and of the properties of the informant being mortgaged for such loan are not disputed. What is disputed, is the informant claims to have never mortgaged the properties but had submitted the documents on good faith as advised, as he had sought for a loan personally. Significantly what was the purpose of the loan sought to be availed by the informant has not been mentioned in the FIR. There is also no plausible explanation forthcoming from the materials on record as to why the documents of such valuable properties were submitted to avail a loan of Rs.10 lakhs only. It is also significant to note that in a query made by the I.O. as to whether any loan was sanctioned to the informant, the Branch Head of Punjab National Bank vide letter dated

09.07.2020 has categorically stated that no loan has been sanctioned in his favour in his personal capacity. He along with his three brothers executed a document as guarantors for the limit sanctioned in favour of M/s. Lingaraj Enterprises for Rs.3.50 crores, which had become NPA. If such be the case, it is not explained as to how an amount of Rs.10 lakhs was transmitted to the account of the informant. Further, the plea taken by the informant that because of his requirement of money he did not raise any query after such transfer to his account seems difficult to believe. It is also not forthcoming as to whether the said amount has been repaid or not. Be that as it may, there is nothing on record to suggest that the petitioners were personally benefited by the alleged fraudulent transaction, if at all. As it appears, the loan was sanctioned in favour of M/s. Lingaraj Enterprises after following several formalities, such as, opinion of the Chartered Accountant, Advocate, Valuer etc. Therefore, in the absence of any clear cut proof to show that any amount from the loan was diverted to the personal account of the petitioners or that there is any nexus between the petitioners and the so called middlemen/firms to whom such diversion was made allegedly to the tune of lakhs, it is, prima facie, difficult to fasten any criminal liability against the petitioners. That apart, charge sheet had already been submitted. All the three petitioners are residents of Bhubaneswar. There is therefore, remote possibility of their absconding from trial. Further, nothing is brought before the Court to show as to if any further incriminating material has been unearthed in the ongoing further investigation. All the required steps including seizure of relevant documents appear to have been taken. The petitioners have spent nearly six months in custody. Therefore, taking into consideration all the above facts, this Court finds no compelling reason to detain them in custody any further.

11. This Court is conscious of the law relating to grant of bail in case of economic offences. The Apex Court in the case of ***Y.S. Jagan Mohan Readdy vs. CBI,*** reported in (2013) 55 OCR (SC) 1321 held as under;

> "*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 public/State and other similar considerations."*

12. Having regard to the ratio as above in the backdrop of the facts of the case, this Court finds no compelling reason to deny bail to the petitioners. The bail applications are therefore, allowed. Let the petitioners be released on such terms and conditions as the court in seisin over the matter may deem fit and proper to impose including the following conditions;

(i) Each of the petitioners shall furnish cash security/bank guarantee of Rs. 5 lakhs. In case the petitioners furnish cash security, the same shall be kept in a short term fixed deposit in any nationalized bank being pledged to the Court. Such deposit shall be without prejudice to the rival claims.

(ii) The petitioners shall make themselves available as and when required by the I.O.

(iii) The petitioners shall not leave the territorial jurisdiction of the Court below without obtaining leave.

(iv) The petitioners shall appear before the trial Court on each date of posting of the case without fail.

12. Bail applications are accordingly disposed of.

13. Issue urgent certified copy as per Rules.

Sd/-

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 29th June, 2022/ A.K. Rana

True Copy

Sr. Steno