ORISSA HIGH COURT: CUTTACK

BLAPL No. 2192 of 2022 &
BLAPL No. 2204 of 2022

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

BLAPL No. 2192 of 2022

AFR

Narendra Nayak	.....	Petitioner

-Versus-

State of Odisha	.....	Opp. Party

BLAPL No. 2204 of 2022

Birendra Kumar Pattanayak	.....	Petitioner

-Versus-

State of Odisha	.....	Opp. Party

Advocate(s) appeared in these cases:-

For Petitioners	:	M/s. Suresh Chandra Mohanty, D.P. Mohanty, P.K. Sahoo, M. Pal, & R. Mohanty, Advocates [in **BLAPL No. 2192 of 2022**] Mr. D.P. Dhal, Sr. Advocate along with Mr. B.S. Dasparida, A Pradhan & S.S. Lenka, Advocates [in **BLAPL No. 2204 of 2022**]
For Opp. Party	:	Mr. S.K. Mishra, Addl. Standing Counsel

CORAM
JUSTICE SASHIKANTA MISHRA

ORDER
29th June, 2022

SASHIKANTA MISHRA, J. Both these bail applications have been filed by the accused persons in EOW, Bhubaneswar P.S. Case No.7 of 2020 corresponding to C.T. Case No. 3889 of 2020 pending before the learned S.D.J.M., Bhubaneswar for the alleged commission of offence under Sections 406/420/467/468/471/120-B of IPC.

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

3. Heard Mr. S.C. Mohanty, learned counsel for the petitioner- Narendra Nayak in BLAPL No. 2192 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.2204 of 2022; and Mr. S.K. Mishra, learned Addl. Standing Counsel for the State.

4. The facts of the cases are that on 14.09.2020, one Paresh Kumar Das, Circle Head, Circle Office, Bhubaneswar of Punjab National Bank lodged FIR before

the Superintendent of Police, Economic Offence Wing (EOW), Bhubaneswar alleging therein that the proprietorship concern, namely M/s. K.P. Solutions was granted cash credit limit of Rs.2.50 crores on the application of its proprietor, Sri Kali Prasad Mishra. The said cash credit limit was collaterally secured by mortgage of property situated in Cuttack. Subsequently, due to non-payment of dues, the account was classified as NPA on 26.02.2019 for which proceeding under SARFAESI Act was initiated against the borrower and the guarantors. Upon receipt of notice, the guarantors, namely, Sri Bighnaraj Mallick and Sri Badri Narayan Mallick stated that they had not created any mortgage of the property nor stood as guarantors for the loan and that the documents were created fraudulently by impersonation. Upon internal investigation, it came to light that Birendra Kumar Pattanayak (petitioner in BLAPL No. 2204 of 2022), who was the Branch Head (Chief Manager) of Bapujinagar Branch had sanctioned the cash credit limit on the recommendation of one Srikanta Prusty, Senior Manager. Several lapses and irregularities were also revealed during such investigation. Accordingly, the aforesaid P.S. case was registered and as the petitioners were in custody in connection with EOW Case No.16 of 2020, they were remanded in the present case. It is alleged that the bank officials had knowingly accepted the forged and disputed land documents without the knowledge of the land owners and had also actively connived with the aforesaid Kali Prasad Mishra to obtain signatures of the impersonators in various loan forms/documents and certified them as genuine so as to sanction the cash credit limit. The accused persons also conspired to pass several debit cheques thereby transferring/diverting the loan amount to the tune of lakhs of rupees to several other firms, persons/middlemen including Rs.90 lakhs to one Prakash Kumar Behera.

5. Leading the arguments on the behalf of the petitioners, Mr. D.P. Dhal, learned Senior Counsel has forcefully contended that Sri Birendra Kumar Pattanayak was the Chief Manager and had acted upon the recommendation made by the Branch Manager, namely Srikanta Prusty. The said Srikanta Prusty had processed

the loan application and had made spot/field verification etc. In so far as the role of Birendra Kumar Pattanayak is concerned, he being the sanctioning authority, had accorded sanction to the proposal as all necessary formalities required in the processing of a loan were found to be in order. At that stage it was not possible nor there was any occasion for him to doubt the veracity/genuineness of the documents processed and duly recommended by the concerned official(s). That apart, there is not a whisper of allegation that accused Birendra Kumar Pattanayak was personally benefited in any manner in the transaction in question.

6. Mr. Suresh Chandra Mohanty, learned counsel appearing for the accused-Narendra Nayak while adopting the arguments made by Mr. Dhal, Sr. Counsel has added that Narendra Nayak was simply the Manager and since all the formalities as per the Bank's norms were complied with, he had no occasion to doubt the genuineness of the documents. It is further contended that at best it would amount to an administrative irregularity but no criminal liability whatsoever can be

attributed in the absence of even a shred of evidence to show that the petitioner had in any manner been benefited personally by such transaction.

7. Learned Senior Counsel as well as Mr. Mohanty have further urged that the borrower having defaulted in payment of the loan dues and Srikanta Prusty having dealt with all the documents must be held to be liable but both of them have been granted bail. Since the petitioners stand on better footing than the aforementioned persons, they should be released on bail as they are local residents and are ready and willing to cooperate with the trial.

8. Mr. S.K. Mishra, learned Addl. Standing Counsel has vehemently opposed the prayer for bail by submitting that firstly all the bank officials including the petitioners had hatched a conspiracy in accepting fraudulent and forged documents of mortgage and also had actively connived to allow impersonation of concerned land owners solely for the purpose of sanctioning the loan. That apart, after sanction of such loan, huge amounts were diverted to different persons/firms/companies which

could not have been possible without the active role played by the Senior Bank Officials. Since the accused persons accepted the fraudulent documents knowing the same to be not genuine, recommended and sanctioned the cash credit loan of Rs. 2.5 crores, no leniency can be shown to them, more so, as the investigation is still open under Section 173 (8) of Cr.P.C..

9. I have considered the rival submissions and have perused the materials on record including the written instructions submitted by the I.O. to the office of the learned Advocate General carefully. Prima facie, there is evidence to show that the petitioners played a vital role in sanctioning the proposal for cash credit loan in question. There are materials to show that the properties of certain persons were mortgaged without knowledge of the owners as also by impersonation. Though the Branch Manager, Srikanta Prusty appears to have been primarily responsible for acceptance of the documents and in making a favorable recommendation to his higher authorities still, the complicity of the Manager- Narendra Nayak and Chief Manager-cum-Sanctioning Authority,

namely, Birendra Kumar Pattanayak cannot be entirely ruled out. Be that as it may, there is, prima facie, no evidence to show that the petitioners were personally benefited in any manner by such fraudulent transaction. Though it is alleged that huge amounts were diverted/transferred to other persons/firms, yet in the absence of any proof of nexus between the said firms and the present petitioners, it is difficult to prima facie hold that such diversion had enured to their benefit. As it further appears, charge sheet has already been submitted since 11.01.2021 keeping the investigation open under Section 173(8) of Cr.P.C. More than one and half years have elapsed in the meantime. Nothing further has been unearthed against the petitioners, save and except the original allegation.

10. 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."*

11. Viewed in light of the ratio as above, this Court finds that the petitioners are senior Bank Officials with both of them being residents of Bhubaneswar and therefore, there is hardly any possibility of their absconding from trial. Moreover, both of them have spent nearly six months in custody. As already stated, charge sheet has already been submitted keeping the investigation open since more than one and half years by now. Such further investigation, if any, has not brought out any other incriminating material against the petitioners.

12. Thus, taking into consideration all the above facts, this Court is inclined to allow the prayer for bail. 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, with such deposit being 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.

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Sashikanta Mishra,
Judge

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