IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.2818 of 2022

Amrita Kumari .... ***Petitioner***

Mr. Gautam Misra, Sr. Advocate
Ms. Bini Mishra, Advocate

-versus-

State of Odisha(EOW) .... ***Opposite Party***

Mr.P.K.Maharaj,
Addl. Standing Counsel

Mr. A.S.Paul, Advocate
(for informant)

Mr. Supriyo Mahapatra, Advocate
(for intervener)

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER
20.7.2022.

Order No.

11. 1. This matter is taken up through hybrid mode.

2. Heard Mr.Gautam Misra, learned Senior counsel, with Ms. Bini Mishra, learned counsel for the Petitioner, Mr. A.S.Paul, learned counsel for the informant, Mr. Supriyo Mahapatra,

learned counsel for the victim and Mr. P.K.Maharaj, learned Addl. Standing Counsel for the State.

3. The Petitioner is in custody since 30th January. 2022 in connection with EOW-CID, CB P.S. Case No.17/2021 corresponding to C.T. Case No.7/2022 pending in the court of learned S.D.J.M., Bhubaneswar for the alleged commission of the offences under Sections 406/420/467/468/471/120-B of the I.P.C.

4. The prosecution case is that on 31 December, 2021 an F.I.R. was lodged by one Sabyasachi Rout, Head-inorganic business, Annapurna Finance Pvt. Ltd. alleging that one Deepak Kindo, M.D of Sambandh Finserve Pvt. Ltd. (SFPL) had availed a loan of Rs.5 crores with rate of interest @ 15.5% per annum with condition of repayment in 12 monthly instalments. But after repaying only Rs.50 lakhs the said loanee firm did not pay any further amount. It was further revealed that the loanee firm had falsely projected a high net-worth through its bank statements for which the loan had been sanctioned, but the loanee had the intention of cheating the borrower. In course of

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investigation, the Petitioner, who is the wife of said Deepak Kindo, was arrested. It is alleged that she is the M.D. of another firm namely, Diya Diary Agroprocessor Pvt. Ltd. (DDAPL), which is a sister concern of SFPL and that some amount was diverted to its account. Further, several other instances of financial fraud amounting to more than Rs.100 crores involving several other entities came to light, for which charge sheet was submitted keeping the investigation open under Section 173(8) of Cr.P.C.

5. It is argued by Mr. G. Misra, learned Senior Counsel, that even accepting the allegations made in the F.I.R. on their face value, it would be seen that the same are directed entirely against the principal accused, Deepak Kindo and there is nothing against the present Petitioner. She has apparently been entangled only because she is the wife of the principal accused. It is further argued that the entire case is in the nature of a civil dispute in the cloak of a criminal proceeding for recovery of the loan amount only to avoid court fees. It is also argued by Mr. Misra that the F.I.R. allegation being confined only to non-payment of the loan amount of Rs.5 crores, the investigating agency has

illegally clubbed several other alleged offences relating to different transactions only to build up a strong case against the principal accused as well as the Petitioner.

6. Per contra, Mr. P.K.Maharaj, learned Addl. Standing Counsel for the State, has contended that though the Petitioner has not been named in the F.I.R., she happens to be the wife of the principal accused as also Proprietor of the sister concern to which huge amount of funds have been diverted by the principal accused. Therefore, the Petitioner is equally liable for the alleged offences as the principal accused. It is further submitted that the Petitioner is an influential person and can easily influence the witnesses, who are the employees of SFPL and DDAPL. Moreover, there is every chance that she may abscond during trial, if necessary by leaving the country also.

7. Mr. Supriyo Mahapatra, learned counsel appearing for the firm M/s. Bopa PTE Ltd., a Singapore based Company, has opposed the prayer for bail by submitting that the Company has invested a total sum of Rs.30.5 crores in SFPL by way of subscription of its shares and such investment was made on the

false projection of financials of SFPL made by its M.D., Deepak Kindo. It is further submitted that if all the fraudulent activities are taken together the amount involved would be a staggering Rs.103.5 crores. Mr. Mahapatra, therefore, submits that since this is an economic offence and the Petitioner is a close associate of the principal accused, she should not be shown any leniency whatsoever.

8. As it appears from the case record, originally a case was registered on the complaint of M/s.Annapurna Micro Finance Pvt. Ltd. on the allegation that M/s. SFPL had availed a loan of Rs.5 crores for the purpose of disbursing the amount to the beneficiaries of Women Joint Liability Groups with the condition of repayment in 12 monthly instalments. Admittedly, SFPF has repaid Rs.50 lakhs leaving the balance of Rs.4.5 crores with interest thereon. It is alleged that the said amount has not been repaid till date and a part of it was diverted to M/s. DDAPL of which the present Petitioner is the M.D. She also happens to be the wife of principal accused, Deepak Kindo. Investigation has, however, forayed into several other alleged

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acts of fraud committed by SFPL involving different firms including M/s. Bopa PTE Ltd., Singapore.

9. Mr. G.Misra has strongly argued that it is not open to the prosecution to enlarge the scope of investigation of one case to include several other cases, even though such cases may be of similar nature. It is submitted that unless all such acts are part of the same transaction, it is not open to the investigating agency to club all such cases while investigating a particular complaint. Mr. Misra has relied upon the decision of the apex court in the case of ***Babubhai and Ors. v. State of Gujarat and Ors***.; reported in 2010(12)SCC 254 and the case of ***Mohan Baitha and Ors. v. State of Bihar and Ors.***; reported in (2001) 4 SCC 350. According to Mr. Misra all complaints of a similar nature, but not relating to the same transaction, which obviously refers to the transaction indicated in the first F.I.R./complaint, cannot be clubbed together. To such extent, therefore, the entire procedure adopted by the prosecution/investigating agency in submitting charge sheet containing different alleged acts of fraud committed by SFPL but not related to the original complaint, is contrary to law.

10. Learned State counsel and learned counsel appearing for M/s. Bopa PTE Ltd. have tried to counter the argument of Mr. Misra as above by submitting that all the acts clubbed together are nothing but a part of the same transaction deliberately entered into by the principal accused and the Petitioner to defraud different firms as also to embezzle public money.

11. In the case of ***Mohan Baitha*** (supra), it has been held that:-

> *"the expression "same transaction" from its very nature is incapable of an exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense and the ordinary use of language must decide whether on the facts of a particular case, it can be held to be in one transaction. It is not possible to enunciate any comprehensive formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. But the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action and community of purpose or design are the factors for deciding whether certain acts form parts of the same transaction or not. Therefore, a series of acts whether are so connected together as to form the same transaction is purely a question of fact to be decided on the aforesaid criteria."*

The observations were made by the apex Court in the context of Section 220 of Cr.P.C. From the above observations, it is clear that the question whether all the transactions mentioned in the charge sheet are part of one and the same transaction or not being essentially a question of fact can be validly agitated in an appropriate forum, but not in the present application, which must be confined only to consideration of the prayer of the Petitioner for grant of bail.

12. Be that as it may, fact remains that the Petitioner is the wife of the principal accused, who being the M.D. of SFPL had availed a loan of Rs.5 crores from the informant firm but had not repaid the same except to the extent of Rs.50 lakhs. Though it is contended that a part of the loan amount was diverted to the firm of which the Petitioner is the M.D., the exact amount so diverted is not forthcoming from the materials on record. The FIR was lodged on 31st December, 2021 and in the mean time investigation having been completed, charge sheet has been submitted on 27th May, 2022. The entire case appears to be based more on documentary than oral evidence. Charge sheet reveals that several documents have been seized in connection with the case. Though investigation has been kept open what further action is to be taken thereby is also not forthcoming. In

the case of ***Sanjay Chandra v. Central Bureau of Investigation***; reported in (2012) 1 SCC 40, the apex Court observed 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 is 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.*
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> *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 unconvicted 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."*

In case of economic offences, the apex Court in the case of ***Y.S.Jagan Mohan Reddy v. Central Bureau of Investigation;*** reported in (2013) 8 SCC 449, observed 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.*
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> 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."

In the case of ***Sanjay Chandra v. Central Bureau of Investigation***; reported in (2012) 1 SCC 40, the Apex Court observed as follows:-

> *"We are conscious of the fact the Accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if approved, may jeopardize*

the economy of the country. At the same time, we cannot lose light of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the Appellants are entitled to the grant of bail pending trial on stringent conditions in order to ally the apprehension expressed by CBI".

13. Viewed in light of the law laid by the apex Court as also the facts narrated in the preceding paragraphs coupled with the fact that the Petitioner being a lady has been in custody for more than six months by now and charge sheet has already been submitted, this Court finds no justified reason to detain her in custody any longer.

14. The bail application is, accordingly, allowed. Let the Petitioner be released on bail on such terms and conditions as may be imposed by the court in seisin over the matter in the aforesaid case including the following conditions:-

(i) She shall furnish cash security of Rs.20 lakhs (Rupees Twenty Lakhs) in the shape of short term deposit in any Nationalized Bank being pledged to the court below, which shall be without prejudice to the rival claims. Since a sum of Rs.5 lakhs (Rupees Five Lakhs) has already been furnished towards cash security by the Petitioner as per order dated 19th May, 2022, she would be required to furnish cash security of Rs.15 lakhs (Rupees Fifteen Lakhs).

(ii) The court below shall insist upon two sureties for such amount as may be determined by it, one of whom should belong to the district of Khurda and the other shall be a close relation of the Petitioner.

(iii) She shall surrender her passport in the court below.

(iv) She shall appear before the trial court on each date of posting of the case, failing which it shall be open to the said court to pass necessary orders to take her to custody again.

(v) She shall not leave the territorial jurisdiction of the Court in seisin over the matter without obtaining leave of the Court and in case leave is granted, she shall furnish

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her contact address and telephone number to the Court as well as the I.O.

15. The BLAPL is disposed of.

16. Urgent certified copy of this order be granted on proper application.

(Sashikanta Mishra)
Judge

AKB

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