

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 3059 of 2022

Jayanti Jena & Others

....

Petitioner

Mr. K.K. Mishra, Advocate

- Versus -

State of Odisha

.... **Opposite Party**

Mr. S.K. Nayak, Addl. Govt. Advocate

Mr. B.C. Pradhan, Advocate (for informant)

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER

20.05.2022

Order No.
06.

1. This matter is taken up through hybrid mode.
2. The petitioners are in custody since 23.03.2022 in connection with Berhampur Town P.S. Case No.9 of 2022 corresponding to G.R. Case No.84 of 2022 pending in the Court of learned S.D.J.M., Berhampur for the alleged commission of offence under Sections 419/420/423/465/466/467/468/ 471/474/120-B of IPC.
3. The brief facts of the case are that one Kamalendu Patro lodged FIR stating that his Late father Laxmikanta Patro and cousin brother Lal Mohan Patro had purchased an area of Ac.11.90 Dec. in Bijipur Mouza from Wunnava Venkat Rama Rao in the year 1972 on execution of registered sale deeds and have been peacefully possessing the lands. In the month of November, 2021, the informant came to know that the ownership of the lands has been transferred in the name of Jayanti Jena, petitioner no.1 and on further scrutiny, it came to light that on 13.07.2021 three RSDs had been executed in the office of Sub-Registrar, Berhampur-I in respect of the said lands, in which one U.V. Rama Rao was mentioned as vendor and the petitioner no.1 as vendee. On further verification it came to light that one Gopinath Panigrahy

impersonating as U.V. Rama Rao had executed the sale deed but actually the original owner U.V. Rama Rao had expired in the year 1994. The petitioner nos. 2 and 3 have assisted the petitioner no.1 in the aforementioned fraudulent transactions. Though it was stated that the lands were sold for a consideration of Rs.1,50,04,000/- but in fact no amount had been transferred to the account of Gopinath Panigrahi, who impersonated as U.V. Rama Rao. Petitioner no.3 is said to be the brain behind the conspiracy having arranged the registered deeds and required stamp papers.

4. Heard Mr. K.K. Mishra, learned counsel for the petitioners and Mr. S.K. Nayak, learned Addl. Government for the State and Mr. B.P. Pradhan, learned counsel appearing for the informant.

5. It is forcefully argued by Mr. K.K. Mishra that even accepting the FIR allegation as correct for the sake of argument, then also the petitioners cannot be put to blame because firstly, petitioner nos. 2 and 3 have no role whatsoever to play in the alleged occurrence and secondly, petitioner no.1 is a bonafide purchaser of the lands in question after having made due enquiry regarding its ownership. It is submitted that on the self-same allegation a Civil Suit is pending in the Court of learned Civil Judge (Sr. Division), Berhampur vide C.S. No. 62 of 2022. It is also submitted that a purely civil dispute has been given the colour of crime only to harass the petitioners. Mr. Mishra also submitted that the allegation of forgery cannot be attributed to the petitioners as they cannot be held to have created the forged documents.

6. Mr. S.K. Nayak, learned Addl. Government Advocate has opposed the prayer for bail by submitting that the petitioners are directly involved in creation of the forged sale deeds by hatching a

conspiracy with the intention of grabbing valuable property belonging to the informant. It is also submitted that the source of such huge amount of money said to have been paid by petitioner no.1 as consideration amount in the sale deed in question has not been disclosed by her. According to Mr. Nayak, this by itself, proves the fraudulent conduct of petitioner no.1. In so far as the petitioner nos. 2 and 3 are concerned, they are guilty of aiding and assisting petitioner no.1 in the illegal transaction and therefore, must be held to be equally guilty. Mr. Nayak further submits that the petitioners are habitual offenders having series of cases of similar nature against their names. It is also submitted that investigation into the case is still in progress which may bring to light the involvement of several other persons who are likely to be involved in the conspiracy.

7. Mr. B.P. Pradhan has also opposed the prayer for bail by submitting that the informant having purchased the property bonafide from its lawful owner way back in 1972 on payment of due consideration, has been deprived of his valuable property because of the conspiracy hatched by the petitioners.

8. I have considered the rival submissions and have also perused the materials on record including the case diary and the instructions furnished by the I.O. to the learned Advocate General, Odisha. As it appears, all the three petitioners have several criminal cases against their names, most of which involve similar offences. It is further observed that the petitioners had absconded from Berhampur soon after registration of the case and were arrested from Thane in the State of Maharastra with much difficulty. Though it is a fact that a civil suit is pending before the competent

Court of law, yet the same relates to declaration of right, title and interest and recovery of possession. Obviously, the same cannot take away the criminal liability of the petitioners viz-a-viz the alleged occurrence. That apart, as submitted by Mr. Nayak, learned Addl. Govt. Advocate, investigation into the case is still in progress. Therefore, taking all the above facts into consideration, this Court does not deem it proper to enlarge the petitioners on bail at this stage as the same may affect the further progress of investigation.

9. In such view of the matter, this Court is not inclined to allow the prayer for bail, which is therefore, rejected. It is however open to the petitioners to renew their prayer for bail after submission of charge sheet in the case.

10. BLAPL is accordingly rejected.

(Sashikanta Mishra)
Judge

A.K. Rana

