

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 3135 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.44 of 2022 corresponding to G.R. Case No.396 of 2022 pending in the Court of learned District and Sessions Judge-cum-Special Judge, Berhampur for the alleged commission of offence under Sections 419/420/423/465/467/468/471/474/120-B of IPC.
3. The prosecution case is that the petitioners hatched a conspiracy among themselves as also with the assistance of other persons to prepare forged sale deeds showing transfer of land from one Gantha Venkat Rao in favour of petitioner no.1 for a consideration of Rs.1,43,86,000/-. Further, by producing the forged sale deeds in the office of Tahasildar, Berhampur, the petitioner no.1 managed to get the lands in question mutated in her favour. It is alleged that the owner of the lands was shown to have executed a general power of attorney in favour of one G. Ravi Rao, who in turn transferred the land in question in favour of petitioner no.1. The said sale transaction was purported to have been made on 24.09.2020 whereas the complainant Trinath Mahanty had

purchased the lands from its lawful owner (Gantha Venkat Rao) on 25.06.1975. On 29.11.2020, the complainant found the petitioners engaged in cutting of bushes on the land by engaging some persons to which he protested, but was told that the land had been purchased by petitioner no.1. Accordingly, he lodged an FIR, which led to registration of the aforesaid case. Investigation is still in progress.

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. 339 of 2021. 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 there is no

proof of the petitioner no.1 having transferred the consideration amount shown to have been paid to the vendor in the sale deed in question. According to Mr. Nayak, this by itself, proves the fraudulent conduct of petitioner no.1. In so far as the petitioners no. 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 names 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 1975 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

