IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.3798 of 2019

Mohammed Naseer .... ***Petitioner***
Mr. Tanmay Mishra, Advocate

-versus-

Republic of India (CBI) .... ***Opposite Party***
Mr. Sarthak Nayak, Adv. (CBI)

CORAM: JUSTICE S.PUJAHARI

ORDER
13.09.2022

Order No.

20. **1.** Heard Mr. Tanmay Mishra, learned counsel for the petitioner and Mr. Sarthak Nayak, learned counsel appearing for the CBI.

2. This petition has been filed by the Petitioner under Section 439 Cr.P.C. for his release on bail inasmuch as he is continuing in custody in SPE No.1 of 2013 arising out of CBI EOW P.S. Case No.RC 3(E) of 2013- Kol. pending in the court of learned Special C.J.M., C.B.I., Bhubaneswar. His prayer for bail having been refused by the learned Sessions Judge, Khurda at Bhubaneswar in BLAPL No.512 of 2019 filed under Section 439 Cr.P.C. vide order dated 17.04.2019, he has approached this Court.

3. The allegation of the prosecution is that the Petitioner floated a ponzi firm, namely, M/s. Fine Indi Sales Pvt. Ltd. which was functioning from different parts of the country including the State of Odisha, mostly from the districts of Bhadrak and Balasore. The Petitioner, who is one of the Directors, allegedly giving assurance to the gullible depositors for high returns had got their hard-earned money deposited in different Schemes. But it appears that when the said Company failed to return the money as promised, one of the investors lodged a report on 17.07.2009 at Sahdevkhunta P.S. Case No.118 of 2009 alleging commission of offence under Sections 406/420/468/471/34 IPC and Sections 4, 5 & 6 of the Prize Chits & Money Circulation Schemes (Banning) Act, 1978. According to the petitioner, the said criminal prosecution launched against him is misconceived and sought for quashment of the same on the ground that the same has sabotaged the genuine business of the Petitioner and made wide publicity in the electronic as well as print media against the Company that the Company is engaged in Prize Chits & Money Circulation Schemes (Banning) Act.

4. The petitioner had challenged the registration of the aforesaid Police case against him, inasmuch as according to him, engagement in Prize Chits & Money Circulation Schemes (Banning) is not an offence and, as such, for quashment of the F.I.R., so also an enquiry into the matter for registering such a false complaint, filed WP(C) No.14503 of 2009. The same was listed before this Court on 20.10.2009 and while the hearing of the said case was going on, the accused-Petitioner was stated to have been taken to custody from the Court premises, and in that circumstance, a Division Bench of this Court passed the order on 20.10.2009 reproduced hereunder:

> "In this writ petition, the plea of the petitioner, inter alia, is that their Scheme is not an offence under the Prize Chits and Money Circulation (Banning) Act, 1978 and an officer be deputed

to hold an enquiry and investigation in respect of the conduct to the opposite party no.2 who is responsible for recording false complaint to sabotage the entire business of the petitioner by giving publicity in Electronics and Print Media and also a direction be given to defreeze the account of the petitioner company and their Directors and shareholders. The writ petition be being heard.

The petitioner has also prayed for an interim direction but since this Court was at the midst of the hearing giving dates of hearing has not passed any order.

Today when this case was taken up, learned counsel for the petitioner, Shri Ashok Saraogi, learned Senior Advocate appearing with Shri A.A.Das, learned counsel, submitted that his clients, namely, Md. Naseer son of late Md. Moin and Syed Ahmed son of Raffi Ahmed, who had come with him to the Court have been arrested by the police from the Court premises. On this, we asked the learned Additional Government Advocate to enquire as to how without leave of the Court they were taken into custody when they had come for the purpose of hearing of this case and produce them before the Court. The I.O who was present in the Court said that he had no knowledge about their arrest. However he was asked to contact the police personnel. Learned Advocate General on instruction has submitted that they were not arrested from the Court premises but were arrested near Kathjori bridge within the City of Cuttack.

However, before our rising, they were brought before the Court. On our query, they informed that while they were sitting in the car in the Car Parking place of the High Court Bas Association, they were taken by the police. It may be noticed that the I.O was also present. Any how since we were in the midst of the haring and it would not be proper that during the course of hearing when persons come for the purpose of attending hearing in the court premises should be arrested without leave of this Court in the premises of the High Court in this manner, we are of the opinion that they should be released forthwith on furnishing personal bond of Rs.25,000.00 (Rupees twenty five thousand) each in connection with the case in question i.e., Sahadevkhunta P.S. Case No.118 of 2009. Their release shall remain operative till final decision of the writ petition. However, both the persons, namely, Md. Naseer and Syed Ahmed shall cooperate with the I.O in the investigation of the case as and when required by him.

Since arguments are continuing, list this case on 27th of October, 2009 along with other connected matters.

Though order has been dictated in the open Court, a free copy of the order shall be handed over to the learned Additional Government Advocate. An authenticated copy of the order shall also be handed over to Shri A.A. Das, learned counsel appearing for the Petitioner.

Issue urgent certified copy."

5. Thereafter, the Petitioner continued to be on bail pursuant to such direction of this Court. However, subsequently, the investigation of the aforesaid Sahadevkhunta P.S. Case was transferred to the C.B.I. for further investigation pursuant to a direction of this Court, for which the present case was registered by the C.B.I. against the petitioner. Charge sheet having been filed against the Petitioner on 14.12.2016 under Sections 120B/420 IPC and Sections 4, 5 and 6 of the Prize Chits & Money Circulation Schemes (Banning) Act, summons was issued to him. But, subsequently, a supplementary charge-sheet was filed indicating the involvement of the petitioner in the offences under Sections 120-B, 409, 420, 468, 471 of IPC and Sections 4, 5 and 6 of the Prize Chits & Money Circulation Schemes

(Banning) Act, 1978. Thereafter, the accused-Petitioner filed a petition under Section 205 Cr.P.C before the trial court and the learned trial court rejected the said petition on 07.03.2018. The Petitioner then filed ABLAPL No.4475 of 2018, and this Court vide order dated 11.01.2019 passed the order as follows :

> "xxx xxx xxx
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> This is an application U/S. 438 Cr. P.C.
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> The petitioner is implicated in the offences punishable U/Ss. 406/420/468/471/34 IPC & Sections 4/5/6 of the Prize Chits & Money Circulation Schemes (Banning) Act.
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> Perused the copy of the F.I.R. attached to the ABLAPL petition.
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> Considered the materials placed by learned counsel for the parties.
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> Taking into consideration the facts and submissions, nature of allegations against the petitioner, circumstances involved and factum of permanent residence of the petitioner, it is directed that the petitioner shall surrender before the learned Special C.J.M., C.B.I., Bhubaneswar, in connection with S.P.E. No.1 of 2013 corresponding to C.B.I. EOW P.S. Case No.RC-2(E) of 2013-KOL within 15 days from

today. In the event of his surrender and motion for bail, learned Special C.J.M., C.B.I., Bhubaneswar, shall dispose of the bail application of the petitioner on merit in accordance with law on the same day. In that event, the Case Diary be made available to the courts concerned to facilitate disposal of the bail application of the petitioner.

Ground of parity, if any, may be considered by the learned court below on the same being canvassed by learned counsel for the petitioner at the time of consideration of the bail application

The ABLAPL is accordingly disposed of.

xxx xxx xxx"

6. Thereafter, the accused-Petitioner filed I.A No.326 of 2019 for extension of time to surrender before the trial court. This Court vide order dated 05.02.2019 extended further two weeks time to him to surrender before the competent court in continuation of the earlier order passed in ABLAPL No.4475 of 2018. The accused-Petitioner filed a petition under Section 437 Cr.P.C. before the learned C.J.M., CBI, Bhubaneswar, and the learned C.J.M rejected the petition vide order dated 14.02.2019.

Challenging the said order, the Petitioner filed BLAPL No.263 of 2019 before the learned Sessions Judge, Khurda at Bhubaneswar who rejected the same vide order dated 01.03.2019. The accused-Petitioner again filed an application for bail before the learned Special C.J.M, CBI, Bhubaneswar who again rejected the same vide order dated 26.03.2019. Challenging the said order, the accused-Petitioner filed BLAPL No.512 of 2019 before the learned Sessions Judge, Khurda and the same was also rejected vide order dated 26.04.2019. It may also be mentioned here that W.P.(Crl.) No.267 of 2010 filed by the petitioner for quashment of the FIR, was dismissed as withdrawn vide order dated 12.06.2020. However, subsequently the matter was further investigated and supplementary charge-sheet was filed against the present Petitioner and others under Sections 120B/409/420/468/471 IPC and Sections 4,5 & 6 of the Prize Chits and Money Circulation Schemes (Banning) Act on 25.03.2022. Therefore, the Petitioner has now come to this Court for his release on bail.

7. Learned counsel for the Petitioner submits, inter-alia, that the Petitioner is a vision impaired person and for all these years he was on bail. No material has been produced to indicate that he has mis-utilized the conditions imposed. Therefore, the Court could not have refused him to be released on bail particularly when he has been indicted in a case under Section 120(B)/420 IPC and Sections 4,5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act. Furthermore, it is submitted that the Petitioner is ready to abide by any terms and conditions to be imposed by this Court, and as such he be released on bail, more so, when he has no flight risk as revealed from the earlier conduct of the Petitioner.

8. Mr. Nayak, learned counsel appearing for the CBI, submits that the Petitioner is the mastermind of the aforesaid crime. He has been booked in a case under Sections 406/420/468/471/34 IPC and Sections 4,5 and 6 of the Prize Chits & Money Circulation Schemes (Banning) Act. But in the meanwhile the investigation reveals that sufficient materials are there showing his involvement in committing fraud and forgery in order to dupe the gullible depositors and in this manner, he has defrauded 2,62,190 number of investors assuring high returns in the Country, and collected more than Rs.703.50 crores till 31.03.2012. However, while he fairly conceding on instruction that custodial interrogation of the Petitioner in this case is no more required, he opposes the prayer for bail of the Petitioner on the grounds that his release would be detrimental to the investigation in unearthing proof regarding involvement of other persons and the angle of conspiracy, though the Petitioner is not a flight risk. Furthermore, it is submitted by Mr. Nayak that the Petitioner being indicted in economic offences, this Court while considering the question of bail should loath in allowing the prayer for bail, especially when the petitioner is involved in an economic offence where there is magnitude of amount is involved. He, therefore, submits that this is not a fit case for release of the Petitioner on bail particularly when the offence alleged prescribes imprisonment for life. In support of such contention, he has placed reliance on the decision of the apex Court in the case of ***Y.S. Jagan Mohan Ready vrs. Central Bureau of Investigation,*** reported in (2013) 7 SCC 450. It is further submitted by him that the petitioner being the kingpin in the entire crime and he having played a pivotal role in defrauding and cheating gullible investors, and a substantial part of the amount collected through ponzi firm having been transferred to his personal account, he does not deserve to be released on bail.

9. In rejoinder, Mr. Mishra, learned counsel for the Petitioner, submits that the custodial interrogation of the Petitioner is no more required and since the account of the Petitioner is freezed and the other co-accused persons, who are also the Directors of the Company, are already on bail, the Petitioner deserves to be released on bail.

10. As per the settled principle of law, the economic offences constitute a class apart and need to be visited with a different approach when the question of bail arises. In the case of ***Y.S. Jagan Mohan Reddy*** (supra) the Apex Court held as under:

> 34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need 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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> 35. 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.

11. In the aforesaid case as well as through different other pronouncements, it has been held by the Apex Court that economic offences constitute a class apart, for which the Court need to visit the same with different approach in the matter of bail and should be loathed while extending the benefit of bail to a person accused of such offences. Needless to mention that in the case at hand, the petitioner has been indicted in economic offences which are not only grave and serious in nature, but also there is involved a larger angle of conspiracy, which requires to be unearthed. Though custodial interrogation is not required by the Investigating Agency as submitted, but the petitioner at large may have impact on the same is not ruled out. The petitioner is the key of the offences committed, as alleged. In that view of the matter, and for the discussions made hereinabove, this Court is not inclined to grant bail to the petitioner in exercise of power under Section 439 of Cr.P.C.

12. Hence, the BLAPL stands dismissed.

(S. Pujahari)
Judge

PKS/MRS