

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 4420 of 2021

Pradeep Kumar Sethy

....

Petitioner

*Mr. Milan Kanungo, Sr. Advocate
along with Mr. Sanjay Narayan Sahoo, Advocate*

Versus

State of Orissa

....

Opposite Party

Mr. S.S. Pradhan, AGA

CORAM:

JUSTICE SAVITRI RATHO

ORDER

17.02.2022

Order No.

- 08.
1. This matter is taken up through hybrid mode.
 2. This is an application under Section 439 of Cr.P.C. for grant of bail to the petitioner-Pradeep Kumar Sethy in connection with Khalikote P.S. Case No. 91 of 2013 corresponding to G.R. Case No. 183 of 2013 pending in the Court of learned C.J.M.-cum-Assistant Sessions Judge, Berhampur for commission of offences punishable under Sections 120 (B)/420/406 / 34 of IPC read with Sections 4, 5 & 6 of the Prize Chits and Money Circulation (Banning) Act.
 3. The petitioner had earlier approached this court under Section – 439 of the Crl.P.C in BL APL No. 3346 of 2018 which had been disposed of on 18.07.2018. He has thereafter moved the learned 1st

Additional Sessions Judge, Berhampur in BL APL No. 229 of 2021 which has been rejected by order dated 19.03.2021.

4. The case of the prosecution in the F.I.R. in brief is that the informant along with others are the customers of Artha Tatwa Group of Companies, which was established by the present petitioner. The present petitioner along with other directors of the company instigated the poor people to deposit money in different schemes in the company and collected near about Rupees 5 crores under different schemes from the informant and others. Thereafter the informant came to know that the said company had closed all its branches situated within the state. When the investors went to the Bhubaneswar head office and met the directors of the company, the latter scolded them in filthy language. It is also alleged that with a promise to return the deposited amount with higher interest, the directors of the company cheated the general public.

5. Mr. Milan Kanungo, learned Senior Advocate appearing on behalf of the petitioner submits that the petitioner was initially arrested on 13.05.2013 in connection with Kharavela Nagar P.S. Case No. 44 of 2013 corresponding to C.T. Case No. 560 of 2013 and subsequently as per the direction of the Hon'ble Apex Court the case was investigated

by the C.B.I. and accordingly the same was renumbered as S.P.E. Case No. 42 of 2014 and the petitioner has been convicted in S.P.E Case no 42 of 2014 by the learned Special Judge ,cum A.C.J.M (CBI) Bhubaneswar on 06.04.2017. In the present case prayer for remand of the petitioner was made by the CBI on 22.08.2013 and he has remained in custody since then for more than eight years. His further submission is that the petitioner is suffering from multiple health ailments and co accused Manoj has been released on bail and that he is entitled to be released on bail under Section – 436- A of the CrI.P.C. His further submission is that the entire property of the petitioner amounting to more than 200 crores has been attached, trial is yet to commence and no useful purpose would be served by detaining him in custody any further.

6. Mr Kanungo learned Senior Advocate submits that the maximum custodial punishment for commission of the offences under which chargesheet has been filed (Sections 120 (B)/420/406/34 of IPC read with Sections 4, 5 & 6 of the Prize Chit and Money Circulation (Banning) Act.) is seven years. Hence relying on the decision of the Hon'ble Apex Court in the case *of Bhim Singh vrs. Union of India (UOI)* reported in *(2015) 13 SCC 605* , he submits that the petitioner having served more than half the maximum punishment prescribed for

offences for the offences under which charge sheet has been filed, the petitioner is entitled to be released on bail under the provisions of Section 436-A of Cr.P.C.

7. Mr. S.S. Pradhan, learned Additional Government Advocate does not dispute the legal position as far as the Section 436-A of Cr.P.C is concerned, but he submits that the petitioner has been remanded in the case about four years back and not eight years. He is the main accused in this case being the Managing Director of the Company and is accused of siphoning away a huge amount of public money and a number of cases are pending against him in various Courts in the State . In the present case, the allegation is that he has Rs.27, 57, 370/- (Rupees twenty seven lakhs fifty seven thousand three hundred seventy only) as per the charge sheet and hence he should not be enlarged on bail until he pays back the entire amount or deposits the said amount in Court as he is likely to abscond if he is released on bail. The learned Additional Govt. Advocate has however not shown that the delay in disposal of the case is attributable to the petitioner.

8. Although there were no averments in the bail application regarding violation of Section 436 - A of Cr.P.C. , but pursuant to submission of the learned counsel , this Court vide order dated

07.12.2021 had called for a report through the Registrar (Judicial) from the court of learned C.J.M.-cum-Asst. Sessions Judge, Ganjam, Berhampur in G.R. Case No. 183 of 2013 as to on which date the prosecution had prayed for taking remand of the petitioner in the case and when the remand order was passed.

9. Pursuant to the said order, report vide letter no. 1468 dated 10.12.2021 from the learned Chief Judicial Magistrate, Ganjam, Berhampur has been received in which it has been mentioned that on 22.08.2013 the prosecution had prayed for taking remand of the accused - Pradeep Kumar Sethi in G.R. Case No. 183 of 2013 arising out of Khallikote P.S. Case No. 91 of 2013 and the prayer was allowed on the same day. Thereafter after several correspondence, the accused- Pradeep Kumar Sethi was produced before the court on 02.02.2018 and was remanded to judicial custody in this case.

10. Sec 436-A of the Code of Criminal Procedure has been inserted by way of an amendment to the CrI.P.C by Act 25 of 2005 w.e.f 23.06.2006. In the statement of objects and reasons, it has been stated as follows:

“There had been instances, where under trial prisoners were detained in jail for periods beyond the maximum period of imprisonment provided for the alleged offence. As remedial

measure, section 436-A has been inserted to provide that where an under trial prisoner other than the one accused of an offence for which death has been prescribed as one of the punishments, has been under detention for a period extending to one-half of the maximum period of imprisonment provided for the alleged offence, he should be released on his personal bond, with or without sureties. It has also been provided that in no case will an under trial prisoner be detained beyond the maximum period of imprisonment for which he can be convicted for the alleged offence.”

Section 436-A of Cr.P.C. reads as follows:-

436-A. Maximum period for which an under-trial prisoner can be detained- *Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:*

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties;

Provided further that no such person shall in any case be detained during the period of investigation inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation –In computing the period of detention under this section for granting bail the period of detention passed due to delay in proceeding caused by the accused shall be excluded.”

11. In the case of **Bhim Singh** (supra) , considering the plight of the under trial prisoners who were detained in jail for long periods without facing trial , the Apex Court has issued various directions after observing as follows :

“5. Having given our thoughtful consideration to the legislative policy engrafted in Section 436A and large number of under-trial prisoners housed in the prisons, we are of the considered view that some order deserves to be passed by us so that the under-trial prisoners do not continue to be detained in prison beyond the maximum period provided under section 436A”.....

This Court in the case of **Santosh Kumar Roul vs State of Orissa** reported in **2019 SCC OnLine Ori 248 : (2019) 128 CLT 689**, has held as follows :

...“13. In the case of Rama Chandra Hansdah (supra), it is held that even a single day delay in release of an undertrial prisoner who is entitled to be released as per section 436-A of Cr.P.C. would amount to serious violation of his right to life under Article

21 of the Constitution of India and every endeavour is to be made by the authorities to prevent breach of Article 21 of the Constitution of India by implementation of section 436-A of Cr.P.C. It is also the settled principle of law that speedy trial is a fundamental right implicit in the broad sweep and content of Article 21 of the Constitution of India and if a person is deprived of his liberty under a procedure which is not reasonable, fair, or just, such deprivation would be violative of his fundamental right under Article 21 of the Constitution of India. Section 436-A Cr.P.C. is a benevolent provision which is incorporated by the legislature with a view to ameliorate the conditions of the under trials who are languishing in jail for a long period of time having undergone more than half of the sentence which the offence carries. The said provision cannot be interpreted in a manner so as to deprive the benefit of such beneficial legislation to the under trial.

It appears that in two other cases , the petitioner has been granted bail vide order dated 17.12.2021 passed in BLAPL No. 2023 of 2020 and BL APL No. 1830 of 2021 vide (***Pradeep Kumar Sethy vs State of Odisha***, inter alia considering the fact that he had been detained in custody since more than eight years, trial was yet to start and his property amounting to Rs 400 crore had been attached by the authorities .

12. In the present case, the offences under which charge sheet has been submitted and cognizance has been taken are under sections 120-B,

420, 406 / 34IPC and Sections 4 , 5 & 6 of Prize Chit and Money Circulation Banning Act. The offences are triable by Magistrate and out of those offences, Section 420 of the Penal Code, 1860 prescribes the maximum punishment which is for a term which may extend to seven years and with fine. The petitioner is in judicial custody in connection with this case since 02.02.2018 and in the process has undergone more than one-half of the maximum period of imprisonment specified for the offence.

13. It is of course necessary to note that Section -436 A Cr.P.C also provides that the Court, may for reasons to be recorded in writing and after hearing the Public Prosecutor , order for the continued detention of the accused for a period longer than one-half of the maximum sentence or release him on bail instead of personal bond with or without sureties .

14. After considering the submissions of the learned counsels , the mandate of Section 436 A of the Cr. P.C , the maximum sentence prescribed for the offences under which chargesheet has been filed, the period spent by the petitioner in custody the view of the Supreme Court in the case of **Bhim Singh** (supra) , and the fact that nothing has been brought to the notice of the Court that trial has been delayed at the instance of the petitioner , but without going into the merits of the

prosecution allegations , I am inclined to allow this application and release the petitioner on bail .

14. Let the petitioner- Pradeep Kumar Sethy be released on bail on such terms and conditions as may be fixed by the learned Court below in seisin over the matter in the aforesaid case, including the following conditions:

- i) He will not threaten or attempt to influence any witnesses while on bail.
- ii) He will not indulge in any criminal activity while on bail,
- iii) He will remain present in Court on each date it is fixed for trial.
- iv) He will not leave the State of Odisha without prior permission of the learned trial Court.
- v) He will deposit his passport before the learned trial Court.

Violation of any condition will entail in cancellation of bail.

The BLAPL is accordingly disposed of.

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

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(Savitri Ratho)
Judge

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