

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.9120 of 2022

Anshuman Samantaray **Petitioner**
Mr.Manoj Ku.Mishra, Sr. Advocate

-versus-

Republic of India **Opp.Party**
Mr.Sarthak Nayak, Special Counsel
C.B.I.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

04.08.2022

Order No.

- 03.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. Heard Mr.Manoj Kumar Mishra, learned Senior Advocate for the Petitioner and Mr.Sarthak Nayak, learned Special Counsel for C.B.I. Perused the records.
 3. The present bail application has been filed under the provisions of Section 438 of the Code of Criminal Procedure for grant of anticipatory bail to the Petitioner in connection with T.R.Case No.02 of 2022 arising out of CBI Bhubaneswar P.S.Case No.RC0152020A0005 of 2020 pending in the file of the learned Special Judge (CBI), Bhubaneswar.
 4. It is submitted by Mr.Mishra, learned senior counsel for the Petitioner that the Petitioner was not arrested by the C.B.I. while the investigation was going on. He further submits that in the meanwhile investigation has been concluded and Charge Sheet has been filed. It

is further contended by the learned Senior Counsel for the Petitioner that the Petitioner is apprehending his arrest by the C.B.I. in connection with the present case. Mr.Mishra, learned senior counsel further referring to judgment of Hon'ble Supreme Court of India in the case of **Satender Kumar Antil –vrs.-Central Bureau of Investigation and another reported in (2021) 10 Supreme Court Cases 773 and Amanpreet Singh-vrs.-Republic of India (CBI), reported in 2021 SCC Online SC 1025** submits that a detailed procedure is required to be followed by the C.B.I. while the accused is required to appear before the trial court for the first time after filing of the Charge sheet. It is further submitted by the learned counsel for the Petitioner that the Hon'ble Supreme Court has reiterated the principle laid down by it in **Siddharth-v.-State of Uttar Pradesh reported in 2021 SCC Online SC 615**. In the case of **Amanpreet Singh v. C.B.I.** the Hon'ble Supreme Court while considering an identical issue, has quoted with approval of the direction contained in para-26 of the judgment rendered by **Delhi High Court on its own Motion vs. Central Bureau of Investigation (2004) 72 DRJ 629**. Laying emphasis on the principles contained in paragraph-26 of the said judgment the Hon'ble Supreme Court in paragraph-14 of the said judgment has issued directives for circulation of the judgment in Amanpreet Singh case (supra) and Siddharth (supra) to the trial courts. For better appreciation Paragraph-26 of the judgment which has been quoted in Amanpreet Singh case(supra) is quoted herein below:

- i. *“Whenever officer-in-charge of Police Station or Investigating Agency like CBI files a charge sheet without arresting the accused during investigation and does not produce the accused in custody as referred in section 170,*

Cr.P.C. the Magistrate or the Court empowered to take cognizance or try the accused shall accept the charge-sheet forthwith and proceed according to the procedure laid down in section 173, Cr.P.C. and exercise the options available to it as discussed in this judgment. In such a case the Magistrate or Court shall invariably issue a process of summons and not warrant of arrest.

- ii. In case the Court or Magistrate exercises the discretion of issuing warrant of arrest at any stage including the stage while taking cognizance of the Charge-sheet, he or it shall have to record the reasons in writing as contemplated under section 87, Cr.P.C. that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him.*
- iii. Rejection of an application for exemption from personal appearance on any date of hearing or even at first instance does not amount to non-appearance despite service of summons or absconding or failure to obey summons and the Court in such a case shall not issue warrant of arrest and may either give direction to the accused to appear or issue process of summons.*
- iv. That the Court shall on appearance of an accused in a bailable offence release him forthwith on his furnishing a personal bond with or without sureties as per the mandatory provisions of Section 436, Cr.P.C.*
- v. The Court shall on appearance of an accused in non-bailable offence who has neither been arrested by the Police/Investigating Agency during investigation nor produced in custody as envisaged in Section 170, Cr.P.C. call upon the accused to move a bail application if the accused does not move it on his own and release him on bail as the circumstance of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail. Reason is simple. If a person has been at large and free for several years and has not been even arrested during*

investigation, to send him to jail by refusing bail suddenly, merely because charge-sheet has been filed is against the basic principles governing grant or refusal of bail.”

5. Mr.Nayak, learned counsel appearing for the CBI submits that there is no apprehension at all on the part of the Petitioner. Therefore, this anticipatory bail application is not maintainable. He further submits that to get an anticipatory bail, learned senior counsel for the Petitioner has to satisfy the Court with regard to existence of apprehension of arrest of the Petitioner by CBI. According to Mr.Nayak, such apprehension is conspicuously absent in the present case. Therefore, he submits that the present Petitioner should appear before the trial court on the date fixed i.e. 08.08.2022 pursuant to the summons issued by the trial court and if so advised the Petitioner may make a prayer before the trial court in the light of the judgment of the Hon'ble Supreme Court referred to herein above instead of rushing to this Court for anticipatory bail. With such submission the learned Special Counsel for C.B.I. prays for rejection of the anticipatory bail application of the Petitioner.

6. Mr.Mishra, learned Senior Counsel for the Petitioner has also referred to the order of this Court in respect of a co-accused namely Subash Chandra Sharma passed by this Court in ABLAPL No.6514 of 2022 vide order dated 06.07.2022.

7. Having heard learned counsel for the parties and upon careful scrutiny of the judgment placed before this Court, this Court directs the Petitioner to appear before the trial court on the date fixed and move an application before the trial Court taking the ground as has been indicated in paragraph-26 of the judgment in the Own Motion case (supra) which must have been circulated as mandated by Hon'ble Supreme Court. In the event such an application is filed, the

same shall be considered in the light of the law laid down by the Hon'ble Supreme Court and the same may be disposed of on the very same day. Further, while considering the application of the present petitioner, it is needless to mention here that the learned trial court shall pass orders keeping in view the order passed in the case of Subash Chandra Sharma (supra) by this Court.

8. With the aforesaid observation the bail application stands disposed of.

9. Issue urgent certified copy of this order as per Rules.

RKS

