

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.6336 of 2021

Maheswar Barik ***Petitioner***
Mr. S.K. Mohanty, Advocate

-versus-

State of Odisha ***Opp. Party***
Mr. S.K. Nayak,
Additional Government Advocate.

BLAPL No.6338 of 2021

Rajanikanta Panigrahi ***Petitioner***
Mr. B.S. Dasparida, Advocate

-versus-

State of Odisha ***Opp. Party***
Mr. S.K. Nayak,
Additional Government Advocate.

BLAPL No.6339 of 2021

Mangalmaya Mishra ***Petitioner***
Mr. B.S. Dasparida, Advocate

-versus-

State of Odisha ***Opp. Party***
Mr. S.K. Nayak,
Additional Government Advocate.

BLAPL No.6340 of 2021

Rajesh Kumar Sethi ***Petitioner***
Mr. B.S. Dasparida, Advocate

-versus-

State of Odisha ***Opp. Party***
Mr. S.K. Nayak,
Additional Government Advocate.

BLAPL No.6364 of 2021

Sukanta Kumar Das

....

Petitioner

Mr. M. Kanungo, Sr. Advocate

-versus-

State of Odisha

....

Opp. Party

Mr. S.K. Nayak,

Additional Government Advocate.

BLAPL No.6391 of 2021

Subrat Kumar Panigrahi

....

Petitioner

Mr. S.K. Panda, Advocate

-versus-

State of Odisha

....

Opp. Party

Mr. S.K. Nayak,

Additional Government Advocate.

BLAPL No.6806 of 2021

Srinibas Ghadai

....

Petitioner

Mr. D.R. Nanda, Advocate

-versus-

State of Odisha

....

Opp. Party

Mr. S.K. Nayak,

Additional Government Advocate.

CORAM:

JUSTICE A.K. MOHAPATRA

Date of hearing : 04.01.2022

Date of Order: 24.01.2022

ORDER

Order No.

05.

1. This matter is taken up through Hybrid Arrangement (Video Conferencing/Physical Mode).

2. Being aggrieved by rejection of their respective bail applications and consequent restriction imposed on the personal liberty of the petitioners by a common rejection order dtd. 2.08.2021 passed by the 2nd Addl. Sessions Judge, Bhubaneswar in C.T. Case No.3524 of 2021, the above noted bail applications have been filed by the above named accused petitioners. Since the facts involved are similar which arises out of a common FIR, all the above noted Bail Applications were heard together and is being disposed by the following common order.

3. In the above noted Bail Applications, the accused-Petitioners are in custody since 28.06.2021 in connection C.T. Case No.3524 of 2021 arising out of Sahid Nagar P.S. Case No.258 dated 28.06.2021 for commission of offences punishable under Sections 419/420/465/467/468/471/120-B, I.P.C. and Sections 66-C/66-D of the Information Technology Act.

4. The prosecution case, in a nutshell, is that the Inspector of Police, namely, Jatindra Nath Sathy Cyber Cell, Bhubaneswar while investigating Sahid Nagar P.S. Case No.21 dated 11.01.2021, registered under Sections 419/420, I.P.C. r/w Sections 66-C/66-D of the Information Technology Act, was required to analyse the CDR details of the mobile number of the accused in that case for the month of December, 2020 and January, 2021. He discovered that the said Mobile belong to Vodafone-Idea service provider of Uttar Pradesh (U.P.) Circle having IMEI No.354985990936960. The accused using the said mobile phone contacted one Itishree Kanungo, the victim in P.S. Case No.21 of 2021, and she was defrauded of a sum of Rs.2,58,999/-(Rupees Two Lakhs fifty-eight thousand nine hundred ninety-nine).

5. Further during search of the mobile number of the accused in that case, it came to light that seven numbers of Vodafone Idea sim cards bearing Mobile numbers 7381258850, 7066421923, 9776007703, 9776235429, 7064450531, 7873101318, 7064459053 had been used by the accused. During investigation, it was further found that all the sim cards belong to Odisha Circle Vodafone-Idea service provider. The CDR analysis further reveals that all those sim cards had been activated at different locations of the State of Odisha, namely, Baripada, Basudevpur (Bhadrak), Barpali (Bargarh) Kshetarajpur (Sambalpur), Bhadrak Town and Madhuban (Baripada).

6. It was further ascertained during investigation that all the above numbers came to a particular place on different dates having cell I.D. Number 405732001805392 (of Vodafone-Idea) of Bhadrak Town and used at the same place by the users in nine numbers of different handsets having different IMEI No.s. Thereafter, suddenly those sim cards having the above referred mobile numbers were, probably, transported to Delhi and used at New Delhi having the same cell ID of the accused and having the same IMEI numbers of the handset which was used in Sahid Nagar P.S. Case No.21 of 2021 to cheat the victims.

7. It was further alleged that more than 100 sim cards of Vodafone-Idea had been used in different handset after being activated at different locations in Bhadrak and Balasore districts of Odisha in the month of February, 2021. After obtaining CDR and CA of the handsets of the above noted mobile numbers and on careful analysis it was found 31 numbers of sim cards of Vodafone-Idea had been activated at a single point of sale (POS) in the name of different customers through the accused petitioners. Out of the aforesaid 31

sim cards, 19 sim cards having different mobile numbers had been transported out of the State of Odisha. Such facts created a strong suspicion in the mind of the I.O. that a organized gang is operating in the State of Odisha and the gang is involved in the process of activating multiple sim cards of different mobile service providers using/impersonating names of different customers and by arranging forged documents without the knowledge of those customers. It is further alleged that those pre-activated sim cards were being transported out of the State of Odisha and the investigating officer apprehends that these pre-activated sim cards were being used in different cyber related crimes to cheat people of their money.

8. On the basis of the entry on 27.06.2021 vide Sahid Nagar P.S. GDE No.4 dated 27.06.2021, the informant Police Officer proceeded to Basudevpur, Bhadrak and with the help of local police nabbed the accused Petitioners.

9. So far as accused petitioner Maheswar Barik is concerned, it is alleged that he was the Director, Sales Executive of Vodafone-Idea service provider. Accused Rajanikanta Panigrahi was the Territorial Sales Executive of the said Company. It is alleged that on being asked both the above named accused demonstrated before the police as to how they were activating the sim cards using forged documents and photos of different customers. On further enquiry by the police, the link of the other co-accused persons surfaced and their involvement in the present crime came to light.

10. The prosecution has alleged that the accused persons named in the F.I.R. along with other culprits hatched a criminal conspiracy and formed a gang in an organized manner to cheat people by using forged and tampered documents and photos of genuine customers by

illegally preparing pre-activated sim cards. Such pre-activated sim cards were being sold to various customers within the State as well as outside the State. In course of enquiry, the police had also recovered and seized a huge numbers of pre-activated sim cards of Vodafone-Idea, BSNL, Airtel and Jio mobile service providers. Further 110 numbers of mobile handsets, in working condition, were also seized on production by the accused persons. Accordingly, Sahid Nagar P.S. Case No.258 dated 28.06.2021 was registered under Sections 419/420/465/467/468/ 471/120-B, I.P.C. and Sections 66-C/66-D of the Information Technology Act.

11. Heard learned counsels for the petitioners in different bail applications and Mr. S.K. Nayak, learned Additional Government Advocate for the State. Perused the case record, F.I.R. and other relevant papers produced by Mr. S.K. Nayak, learned Additional Government Advocate in a sealed packet.

12. The argument advanced by the learned counsels appearing for the Petitioners in the above noted bail applications were almost similar. It was submitted that the accused-petitioners have been falsely implicated in this case and they have no role in the commission of the alleged offences. It is further submitted by them that the investigation of the case has substantially progressed and preliminary charge-sheet has already been filed keeping the investigation open. It is also submitted by the learned counsel for the Petitioners that the Petitioners belong to the locality and there are no criminal antecedents against the Petitioners. Further submission of the Petitioners counsels is that the accused persons are in custody for more than six months and that since final charge-sheet has not been submitted by the police and in view of the restricted functioning of

the court due to outbreak of COVID-19 Pandemic, the trial is not likely to commence soon and even if the same is commenced, it is not known how long the trial will take. They further submit that the accused petitioners are local youth and self employed. They are earning their livelihood to sustain their respective families.

13. So far as accused petitioner Srinibas Ghadai, Petitioner in BLAPL No.6806 of 2021, is concerned, it is submitted that he is a local businessman of Bhadrak Town and runs his own shop to earn his livelihood to sustain himself and his family. So far as accused Susant Kumar Das, the petitioner in BLAPL No.6364 of 2021, is concerned, it is submitted by Mr. Millan Kanungo, learned Sr. Advocate that the accused-Petitioner is working as a cashier in Bhadrak Autonomous College, Bhadrak and that the Petitioner has no knowledge about the commission of alleged crime and that he has been falsely implicated in the present case. It is further submitted by Mr. Kanungo, learned Sr. Advocate that since the accused-Petitioner is an employee of Bhadrak Autonomous College, Bhadrak, there is no chance of absconding. He further submits that on being released on bail, the Petitioner shall co-operate with the investigation and appear before the trial court on each and every date without fail. Mr. Kanungo further submits that the Petitioner is willing to abide by any terms and conditions that will be imposed by this Court in the event the petitioner is released on bail by this court.

14. So far accused Rajanikant Panigrahi is concerned, i.e. Petitioner in BLAPL No.6338 of 2021, it is submitted by Mr. B. S. Das, learned counsel for accused Rajanikant that the accused-Petitioner was appointed as a territorial sales executive under Aditya Birla company dealing with Idea Sales Services limited and his duty

was only to see maintenance of tower erected by the company and to supervise the wholesale and retail sale of sim cards to promote business prospects of the company. He further submits that there is no scope of absconding or tampering with the evidence.

15. Learned counsels appearing for the Petitioners took almost a common stand that the Petitioners are not involved in the present crime and that they are the sole earning members of their family and their further detention in custody would cause hardship to the entire family. It is further submitted by learned counsel appearing for the Petitioners that the Petitioners are in custody for more than six months and by now the investigation has substantially progressed and that the I.O. has filed preliminary charge-sheet in the meantime although further investigation in the case is going on. The Petitioners are ready and willing to abide by any terms and conditions that will be imposed by this Court in the event they are released on bail.

16. Mr. S.K. Nayak, learned Additional Government Advocate appearing for the State in all the aforesaid bail applications strongly opposes the prayer of the Petitioners for their release on bail. The contention of Mr. Nayak is that pursuant to a well planned criminal conspiracy, the Petitioners are found to be involved in large scale forgery of documents and photographs of customers and such forged documents have been used to prepare pre-activated sim cards. Mr. Nayak expresses his apprehension that a detailed and final investigation would reveal all these pre-activated sim cards have been used in criminal activities like cheating, forgery etc. etc. He further submits that if these pre-activated sim cards fall into the hands of anti-national elements active in the country including the Maoists and terrorist groups, the same would pose grave threat and

danger to the safety and security of the citizens of this country including dignitaries, celebrities, leaders, eminent persons and VVIPs. He further opposes the grant of bail on the ground that the investigation of the case has not been finally concluded yet. Learned Additional Government Advocate draws the attention of the Court to the fact that the cyber crime in the country is on the rise in the last couple of years. Therefore, the Court should not show any leniency in the matter and further bail should not be granted to the accused persons involved in the present crime. He further submits that if the Petitioners are released on bail at this stage, that would create hindrance in the process of smooth and early conclusion of the investigation of the case. He also expresses his concern that accused-Petitioners after being released on bail might not cooperate with the investigation and eventually the same would lead to delay in conclusion of the trial and it may so happen that the Petitioners might absconded.

17. The Hon'ble Supreme Court of India on numerous occasions encountered the issue of the principles to be followed by Courts while exercising the discretion in considering the bail applications filed by the accused. Further, time and again, it has been stated that bail is the rule and committal to jail is an exception. It has also been observed in many judgments that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution. In the case of ***State of Rajasthan v. Balchand*** : reported in (1977) 4 SCC 308, the Hon'ble Supreme Court of India while speaking through V.R. Krishna Iyer J. has opined, in paragraph 2 and 3 of the judgment, as follows;

“2. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the

course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the Petitioner who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative.

3. It is true that the gravity of the offence involved is likely to induce the Petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also the heinousness of the crime. Even so, the record of the Petitioner in this case is that, while he has been on bail throughout in the trial court and he was released after the judgment of the High Court, there is nothing to suggest that he has abused the trust placed in him by the court; his social circumstances also are not so unfavourable in the sense of his being a desperate character or unsocial element who is likely to betray the confidence that the court may place in him to turn up to take justice at the hands of the court. He is stated to be a young man of 27 years with a family to maintain. The circumstances and the social milieu do not militate against the Petitioner being granted bail at this stage. At the same time any possibility of the absconson or evasion or other abuse can be taken care of by a direction that the Petitioner will report himself before the police station at Baren once every fortnight.

18. The principles, which the Courts must consider while granting or declining bail, have been culled out by the Supreme Court of India in the case of ***Prahlad Singh Bhati v. NCT, Delhi*** : reported in (2001) 4 SCC 280, thus;

“The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of the evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing 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 or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

19. In *State of U.P. vrs. Amarmani Tripathi* : reported in (2005) 8 SCC 21, the Supreme Court of India has held as under:

“18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail (see *Prahlad Singh Bhati v. NCT, Delhi* and *Gurcharan Singh v. State (Delhi Admn.)*). While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in *Kalyan Chandra Sarkar v. Rajesh Ranjan*: (SCC pp. 535-36, para 11);

11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of

course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See ***Ram Govind Upadhyay v. Sudarshan Singh and Puran v. Rambilas.***)

22. While a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no prejudging and no prejudice, a brief examination to be satisfied about the existence or otherwise of a prima facie case is necessary.”

20. In ***Sanjay Chandra vrs. CBI*** : reported in (2012)1 SCC 40, the Supreme Court of India while considering bail application of the accused involved in an economic offence has held as under;

“14. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

From the earliest times, it was appreciated that

detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.

26. When the under trial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is : whether the same is possible in the present case. There are seventeen accused persons. Statement of the witnesses runs to several hundred pages and the documents on which reliance is placed by the prosecution, is voluminous. The trial may take considerable time and it looks to us that the Appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that accused should be in jail for an indefinite period. No doubt, the offence alleged against the Appellants is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, should not deter us from enlarging the Appellants on bail when there is no serious contention of the Respondent that the accused, if released on bail, would interfere with the trial or tamper with evidence. We do not see any good reason to detain the accused in

custody, that too, after the completion of the investigation and filing of the charge-sheet. This Court, in the case of ***State of Kerala v. Raneef*** : reported in (2011) 1 SCC 784, has stated:

15. In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody. Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the Respondent has already spent 66 days in custody (as stated in Para 2 of his counter-affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dicken's novel *A Tale of Two Cities*, who forgot his profession and even his name in the Bastille."

21. In ***Arnab Manoranjan Goswami vs. The State of Maharashtra and Ors.*** : reported in (2021) 2 SCC 427 the Hon'ble Supreme Court of India while considering the grant of bail by Court in exercise of the writ jurisdiction had the occasion to examine the leading judgments of the Supreme Court of India laying down the principles for grant of bail to an accused. While summing up the principles, Dr. D.Y. Chandrachud, J. considered the judgments in the matters of (1) ***Prahlad Singh Bhati v. NCT, Delhi*** : (2001) 4 SCC 280; (2) ***Ram Govind Upadhyay v. Sudarshan Singh*** : (2002) 3 SCC 598; (3) ***State of UP v. Amarmani Tripathi*** : (2005) 8 SCC 21; (4) ***Prasanta Kumar Sarkar v. Ashis Chatterjee*** : (2010) 14 SCC 496; (5) ***Sanjay Chandra v. CBI*** : (2012) 1 SCC 40; and (6) ***P. Chidambaram v. Central Bureau of Investigation Criminal Appeal***

No. 1605 of 2019 decided on 22 October 2019 and laid down the following principle/guidelines;

- (i) The nature of the alleged offence, the nature of the accusation and the severity of the punishment in the case of a conviction;
- (ii) Whether there exists a reasonable apprehension of the Accused tampering with the witnesses or being a threat to the complainant or the witnesses;
- (iii) The possibility of securing the presence of the Accused at the trial or the likelihood of the Accused fleeing from justice;
- (iv) The antecedents of and circumstances which are peculiar to the Accused;
- (v) Whether prima facie the ingredients of the offence are made out, on the basis of the allegations as they stand, in the FIR; and
- (vi) The significant interests of the public or the State and other similar considerations.

Further, in paragraph 63 of the aforesaid judgment it has been held as follows;

63. More than four decades ago, in a celebrated judgment in ***State of Rajasthan, Jaipur v. Balchand*** MANU/SC/0152/1977 : (1977) 4 SCC 308, Justice Krishna Iyer pithily reminded us that the basic Rule of our criminal justice system is 'bail, not jail'¹³. The High Courts and Courts in the district judiciary of India must enforce this principle in practice, and not forego that duty, leaving this Court to intervene at all times. We must in particular also emphasise the role of the district judiciary, which provides the first point of interface to the citizen. Our district judiciary is wrongly referred to as the 'subordinate judiciary'. It may be subordinate in hierarchy but it is not subordinate in terms of its importance in the lives of citizens or in terms of the duty to render justice to them. High Courts get burdened when courts of first instance decline to grant anticipatory bail or bail in deserving cases. This continues in the Supreme Court

as well, when High Courts do not grant bail or anticipatory bail in cases falling within the parameters of the law. The consequence for those who suffer incarceration are serious. Common citizens without the means or resources to move the High Courts or this Court languish as under trials. Courts must be alive to the situation as it prevails on the ground - in the jails and police stations where human dignity has no protector. As judges, we would do well to remind ourselves that it is through the instrumentality of bail that our criminal justice system's primordial interest in preserving the presumption of innocence finds its most eloquent expression. The remedy of bail is the "solemn expression of the humaneness of the justice system"¹⁴. Tasked as we are with the primary responsibility of preserving the liberty of all citizens, we cannot countenance an approach that has the consequence of applying this basic Rule in an inverted form. We have given expression to our anguish in a case where a citizen has approached this Court. We have done so in order to reiterate principles which must govern countless other faces whose voices should not go unheard.

22. In a very recent judgment of the Hon'ble Supreme Court of India in the matter of ***Satender Kumar Antil vs. Central Bureau of Investigation and Ors.*** : reported in (2021) 10 SCC 773, based on the suggestions received, various offences have been categorized and Guidelines have been laid down for grant of bail, without fettering the discretion of the Courts concerned and keeping in mind the Statutory provisions. The relevant paragraphs have been extracted here in below;

“3. We are inclined to accept the Guidelines and make them a part of the Order of the Court for the benefit of the Courts below. The Guidelines are as under:

Categories/Types of Offences:

(A) Offences punishable with imprisonment of 7 years or less not falling in Category B & D.

(B) Offences punishable with Death, Imprisonment

for Life, or imprisonment for more than 7 years.

(C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (Section 37), PMLA (Section 45), UAPA [Section 43-D(5)], Companies Act, 212(6), etc.

(D) Economic offences not covered by Special Acts.
Requisite Conditions:

- (1) Not arrested during investigation.
- (2) Cooperated throughout in the investigation including appearing before Investigating Officer whenever called.

(No need to forward such an Accused along with the Charge-sheet (*Siddharth v. State of U.P.* : 2021 (3) MWN (Cr.) 1 (SC))

Category A:

After filing of Charge-sheet/Complaint taking of cognizance-

(a) Ordinary summons at the 1st instance/including permitting appearance through Lawyer.

(b) If such an Accused does not appear despite service of Summons, then Bailable Warrant for physical appearance may be issued.

(c) NBW on failure to failure to appear despite issuance of Bailable Warrant.

(d) NBW may be cancelled or converted into a Bailable Warrant/Summons without insisting physical appearance of Accused, if such an Application is moved on behalf of the Accused before execution of the NBW on an undertaking of the Accused to appear physically on the next date/s of hearing.

(e) Bail Applications of such Accused on appearance may be decided w/o the Accused being taken] in physical custody or by granting Interim Bail till the Bail Application is decided.

Category B/D:

On appearance of the Accused in Court pursuant to process issued bail application to be decided on merits.

Category C:

Same as Category B & D with the additional condition of compliance of the provisions of Bail under NDPS, Section 37, Section 45 of PMLA, Section 212(6) of Companies Act Section 43-D(5) of UAPA, POSCO, etc.

4. Needless to say that the Category A deals with both Police cases and Complaint cases.

5. The Trial Courts and the High Courts will keep in mind the aforesaid Guidelines while considering Bail Applications. The caveat which has been put by learned ASG is that where the Accused have not cooperated in the investigation nor appeared before the Investigating Officers, nor answered summons when the Court feels that Judicial custody of the Accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the aforesaid approach cannot give them benefit, something we agree with.

6. We may also notice an aspect submitted by Mr. Luthra that while issuing Notice to consider bail, the Trial Court is not precluded from granting Interim Bail taking into consideration the conduct of the Accused during the investigation which has not warranted arrest. On this aspect also we would give our imprimatur and naturally the Bail Application to be ultimately considered, would be guided by the Statutory provisions.

7. The suggestions of learned ASG which we have adopted have categorized a separate set of offences as "Economic Offences" not covered by the Special Acts. In this behalf, suffice to say on the submission of Mr. Luthra that this Court in *Sanjay Chandra v. CBI*, : 2012 (1) MWN (Cr.) 161 (SC) : 2012 (1) SCC 40, has observed in Para 39 that in determining whether to grant bail both aspects have to be taken into account:

- (a) seriousness of the charge, and
- (b) severity of punishment.

Thus, it is not as if Economic Offences are completely taken out of the aforesaid Guidelines but do form a

different nature of offences and thus, the seriousness of the charge has to be taken into account but simultaneously, the severity of the punishment imposed by the statute would also be a factor.”

23. Having heard learned counsel appearing for the respective Petitioners and Mr. S.K. Nayak, learned Additional Government Advocate for the prosecution and after going through the materials placed before this Court including the case diary, F.I.R. and other relevant papers after examining the factual background of the case with the touchstone of the principles/guidelines enunciated by the Hon’ble Supreme Court of India in the above referred judgments, this Court is inclined to release the Petitioners on bail for the following reasons:-

- I. The accused-Petitioners are in custody since 28.06.2021 i.e. for more than six months;
- II. The investigation of the case has progressed substantially and preliminary charge-sheet has been filed in this case;
- III. The allegation of the alleged cheating/forgery has not been established/quantified till date although the investigation is still going on and it is not known how long the investigation of the case is going to continue;
- IV. The Petitioners are all youth of the locality either engaged in their business activity or employed by different institutions/companies;
- V. On being specifically asked, the prosecution was not able to give any details regarding any criminal

antecedents of the petitioners, although learned counsels for the Petitioner submitted that the Petitioners have no criminal antecedents against their names;

VI. The nature of allegation and the offences involved particularly, the offence under Sections 66-C and 66-D of the information technology act are punishable for a maximum period of three years and so far other alleged sections are concerned, the maximum imprisonment provided is upto 7 years;

VII. The apprehension of the learned Additional Government Advocate that the Petitioner on being released on bail, the Petitioners may not co-operate with the investigation of the case. Such apprehension can very well be taken care of by grant bail subject to the conditions that they shall appear before the concerned police station as well as before the trial court on each date fixed;

VIII. Apart from the general allegation no specific allegation or incriminating materials were produced to prima facie establish any specific role played by any one of the Petitioners in the alleged crime; and

IX. Further, the investigation of the case with regard to misuse of sim cards outside the State in ordinary course would take longer time and as

such, keeping the accused persons in custody may not be in the interest of justice.

24. Let the Petitioners be released on bail by furnishing bail bond of Rs.50,000/- (Rupees fifty thousand) each with two solvent sureties each for the like amount to the satisfaction of the learned court in seisin over the matter subject to conditions that :-

- (i) The Petitioner shall not tamper with the evidence particularly evidence available on web portal and in electronic modes;
- (ii) The Petitioners shall not influence or threaten any prosecution witnesses in this case and shall stay away from such witnesses;
- (iii) The Petitioners shall submit their travel documents including their passports, in case any one doesn't have a passport, an affidavit to that effect be filed in the trial court and without prior/specific permission of the court in seisin over the matter, the petitioners shall not go out of the State;
- (iv) The Petitioner shall cooperate with the investigation as and when their presence is required by the Investigating Agency, they shall make themselves available before the Investigating Officer with prior notice;
- (v) The Petitioners shall appear before the concerned Police Station under whose jurisdiction they are residing, at least once in every week preferably on

‘Sunday’ in between 10.00 A.M. to 1.00 P.M. till submission of final charge-sheet;

- (vi) Any other conditions as would deem fit and proper by the court in seisin over the matter shall be imposed by the said court;
- (vii) Violation of any of the terms and conditions, stated hereinabove, shall entail cancellation of bail granted by this Court; and
- (viii) Observations made in these bail applications are confined to these bail applications only and the trial court shall not be influenced by such observation during trial and shall proceed on the basis of evidence and materials to be produced before the said court and decide the case on its own merit.

The Bail Applications are accordingly allowed.

25. As the restrictions due to resurgence of COVID -19 situation are continuing, learned counsel for the parties may utilize a print out of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned Advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021 and Office Order dated 7th January, 2022.

(A.K. Mohapatra)
Judge