

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.8988 of 2022

Nishi Priyadarshini

....

Petitioner

Mr. S.K. Dalai, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. K.K Gaya, ASC

Mr. J. Sahoo, Adv. (Informant)

CORAM: JUSTICE V. NARASINGH

ORDER
09.11.2022

Order No.

06.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the Petitioner, learned counsel for the State and learned counsel for the Informant.
3. The Petitioner is an accused in G.R. Case No.1275 of 2022 pending on the file of learned S.D.J.M., Berhampur, arising out of Baidyanathpur P.S. Case No.185 of 2022, for commission of the offence alleged under Sections 341/294/420/468/471/120-B/34 IPC and is in custody since 11.08.2022.
4. Being aggrieved by the rejection of her application for bail U/s.439 Cr.P.C. by the learned 1st Addl. Sessions Judge, Berhampur by order dated 30.08.2022 in the aforementioned case, the present BLAPL has been filed.
5. It is submitted by the learned counsel for the Petitioner that C.S. No.176 of 2022 was filed by Sangram Keshari Mahanty as Plaintiff co-accused (Petitioner in BLAPL No.8506 of 2022) against

the Informant and other co-accused who are arrayed as Defendants. The prayer made in the said civil suit is quoted hereunder for convenience of ready reference.

“i. By declaring the Regd Lease Agreement bearing No.10602201512 dt.09.03.2022 executed by the Defendant No.2 in favour of the Specimen Holdings Limited being represented by its Director Rushi Prasad Nahak for renewal of license of Apollo Clinic for a period of 5 years from 01.04.2021 to 31.03.2026 is a valid document.

ii. For grant of permanent injunction restraining the defendants and their men from interfering with the possession of the plaintiffs Apollo clinic till 31.03.2026.

iii. To grant any other reliefs as deem fit and proper in the fitness of the case.”

6. It is further submitted by the learned counsel for the Petitioner that even if the entire recitals in the FIR are accepted at the face value, no case under Sections 341/294/420/468/471/120-B/34 IPC is made out and in fact allegations are more or less civil in nature and have been given the color of a criminal case as an arm twisting tactics. It is also submitted that the Informant and the accused Petitioner are the Directors of the same company, namely, Aum Aarogya Hospitals Private Limited and the entire transaction as cited in the FIR is agitated in Civil Suit bearing number C.S. No.176 of 2022 on the file of learned Civil Judge (Senior Division), Berhampur, Ganjam, adverted to herein above.

7. On a perusal of the plaint, which is on record, it is seen that the same has been filed by one of the co-accused Sangram Keshari Mahanty and the Informant and the accused Petitioner have been arrayed as Defendant Nos.2 and 3 respectively and one of the prayer in the civil suit is to declare the very registered lease agreement, which is the subject-matter of the FIR, which is stated to have been executed consequential to the resolution passed in the meeting of the

Board of Directors of Aum Aarogya Hospitals Private Limited, to which both the Petitioner as well as the Informant are the signatories, as a valid document.

8. It is the further submission of the learned counsel for the Petitioner that co-accused Rushi Prasad Nahak has been released on anticipatory bail by order of this Court dated 26.08.2022 in ABLAPL No.10135 of 2022. Hence, her further continuance in custody, keeping in view the nature of allegation, is not warranted.

9. Learned counsel for the State relies on the statement of the Informant and submits that in a designed and calculated manner, the Informant has been duped.

10. Learned counsel for the Informant, on instruction, submits that another FIR has been filed regarding the genuineness of the signature of the Informant in the resolution at Annexure-3, dated 31.03.2021 on the basis of which the lease was executed. He places on record the copy of the FIR i.e. Baidyanathpur P.S. Case No.317 dated 15.09.2022 in which the present Petitioner and her husband has been cited as an accused.

11. This Court perused the FIR and considered the recitals in the case diary submitted by the learned counsel for the State. On perusal of the same, it comes to fore that the civil suit is pending relating to the lease deed in question and it is worth noting that the civil suit as stated was instituted on 23.04.2022 and the FIR was filed on 12.06.2022.

12. Taking into account the recitals in the FIR and the case diary and the nature of allegation, this Court is of the prima facie view that a civil dispute has been camouflaged so as to bring the same within the contour of criminal proceeding.

12(A). It needs no emphasis that observations as made in the preceding paragraph are in the context of consideration of the present bail application. It ought not to be construed as prejudging the allegations, which is the subject-matter of ongoing investigation.

13. Considering the nature of allegation and copy of the resolution of the meeting of the Board of Directors at Annexure-3, though the signature of the informant therein is the subject-matter of FIR filed i.e. Baidyanathpur P.S. Case No.317 dated 15.09.2022, taking into account the release of the co-accused, the substantial progress in investigation and the period of custody, this Court invoking the proviso to Section 437(1) Cr.P.C directs the Petitioner to be released on bail on such terms to be fixed by the learned court in seisin over the matter.

14. Additionally, it is directed that the Petitioner shall appear before the I.O on such time and date as fixed by the learned Court in seisin. The Petitioner shall not leave the State of Odisha without the express permission of the Court in seisin. While fixing such date and time, learned Court in seisin shall be conscious that the Petitioner is a lady.

15. It is needless to state that there are no fetters on the investigating agency to continue their probe into Baidyanathpur P.S. Case No.317 dated 15.09.2022.

16. Accordingly, the BLAPL stands disposed of.

17. Urgent certified copy of this order be granted as per rule.

(V. NARASINGH)
Judge

PKS