

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.8882 of 2021

Mohammad Arif **Petitioner**
Mr. S.P. Mishra, Sr. Adv.
-versus-
Enforcement Directorate **Opposite Parties**
Mr. Gopal Agarwal, Adv.
(For ED)

CORAM:

Mr. JUSTICE S.K. PANIGRAHI

Order
No.

ORDER
31.05.2022

10.

1. This matter is taken up by hybrid mode.
2. Heard learned counsel for the petitioner and learned counsel for the Opp. Party-Enforcement Directorate.
3. The petitioner being in custody in connection with Complaint Case bearing C.C. (PMLA) No.47 of 2017 arising out of Enforcement Directorate (ED) registered ECIR No.7 of 2009 pending before the court of learned Sessions Judge-cum-Special Judge under PMLA, Khurdha, Bhubaneswar, registered for the alleged commission of offence under Sections 3 and 4 of Prevention of Money Laundering Act, 2002, has filed this application under Section 439 of Cr.P.C. for his release on bail.
4. The prosecution case, as per the allegation of the said case of ED, M/s Fine Industrious Pvt. Ltd

(FIPL) had collected huge amount from the general public. FIPL transferred the amount to M/s Eva Industries and in turn Eva Industries transferred some amount to M/s Great Entertainment and said M/s Great Entertainment transferred an amount of Rs.25 Crores to the company of the accused namely M/s Lemon Entertainment Ltd, in which the petitioner is a Director having 8.87% share and that the petitioner had withdrawn Rs.1.5 Crores through self cheque in the meantime the prosecution has also filed one supplementary / additional complaint petition on 10.01.2020, before the learned trial court.

- 5.** Learned counsel for the petitioner submits that the involvement of the Petitioner is limited to withdrawal of Rs.1.5 Crore through self cheque, which the petitioner has utilized the same for his company and the details of such account the petitioner has already been stated during his custodial interrogation. Furthermore, the Petitioner has already been examined/interrogated by ED authority and that all the documents relating to the company of the petitioner has already been seized by CBI. Additionally, he has always co-operated with the investigation of the case with CBI, so also with

ED authority. The claim of ED authority. There is absolutely no progress in the case relating to the petitioner either by the ED or by the learned trial Court from the date of arrest of the Petitioner and that last about 21 months from the date of arrest of the petitioner, for which the petitioner is suffering in Jail Custody.

6. Learned counsel for the State vehemently opposed the bail prayer of the Petitioner on the grounds that there is clinching evidence against the Petitioner. The nature and gravity of the offence, the position and status of the accused with reference to the victims who are common gullible citizens who have lost their money and there is a likelihood of fleeing from justice, deserve no mercy by way of granting the bail.

7. Observing that economic offence is committed with deliberate design with an eye on personal profit regardless to the consequence to the community, in **State of Gujarat v. Mohanlal Jitamalji Porwal and others**¹, it was held as under:-

“5.The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the

¹ (1987) 2 SCC 364

heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest....”

8. Observing that economic offences constitute a class apart and need to be visited with different approach in the matter of bail, in **Y.S. Jagan Mohan Reddy v. CBI**, the Supreme 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.*

35. *While granting bail, the court has to keep in mind the nature of accusations, the*

² (2013) 7 SCC 439

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.”

9. The Supreme Court while dealing with the issue of bail in money laundering cases in the case of **P. Chidambaram vs Directorate Of Enforcement**³, held that:

“82. In a case of money-laundering where it involves many stages of “placement”, “layering i.e. funds moved to other institutions to conceal origin” and “interrogation i.e. funds used to acquire various assets”, it requires systematic and analysed investigation which would be of great advantage. As held in Anil Sharma, success in such interrogation would elude if the accused knows that he is protected by a pre-arrest bail order..... In the case in hand, there are allegations of laundering the proceeds of the crime. The Enforcement Directorate claims to have certain specific inputs from various sources, including overseas banks. Letter rogatory is also said to have been issued and some response have been received by the department.

³ SLP(Crl.) No.7523 of 2019

Having regard to the nature of allegations and the stage of the investigation, in our view, the investigating agency has to be given sufficient freedom in the process of investigation.”

10. Since the petitioner is a resident of Delhi and there is likelihood of flight risk and misuse of the liberty of bail and the trial is likely to suffer, the present case does not inspire the confidence of this Court to use the judicial discretion to grant bail in favour of the petitioner.

11. Considering the nature and gravity of the accusation, character of evidence appearing against the petitioner, the stringent punishment prescribed and that there are reasonable grounds to believe that the petitioner has no role in the offence alleged or not likely to commit any such offence, which is not possible to record in this case. The prayer for bail is devoid of any merit. Accordingly, the prayer for bail stands rejected. However, the Trial court is directed to expedite the trial and take steps to complete the trial preferably within a period of six months from today.

12. Accordingly, the BLAPL stands disposed of being dismissed.

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

(S.K.Panigrahi)
Judge

BJ

