IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.13868 of 2022

Ramesh Kumar Behuria .... ***Petitioner***
Mr. B.P. Pradhan, Advocate

-versus-

State of Odisha .... ***Opp. Party***
Mr. Sarthak Nayak, Advocate for the CBI

CORAM:
JUSTICE CHITTARANJAN DASH

ORDER
16.11.2022

Order No.

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1. Heard Mr. Pradhan, the learned counsel for the Petitioner and Mr. S. Nayak, learned counsel for the CBI.

2. By means of this application, the Petitioner seeks bail U/s.438 Cr.P.C. in anticipation of arrest for his alleged involvement in the offences U/s.120(B)/420/468/471/467 IPC read with Section 13(2) and 13(1)(d) of the Prevention of Corruption Act (herein after in short called the P.C.Act) in connection with CBI, ACB Bhubaneswar P.S. Case No.RC0152022A0011/2022 pending in the court of learned Special Judge, CBI-I, Bhubaneswar.

3. It is alleged that the Petitioner being the proprietor of M/s.R.K. Behuria availed cash credit limit of Rs.250 lakh on 20th February, 2009 from Bank of Baroda and availed further cash credit limit of Rs.1200 lakh as export packing credit, foreign bills purchase and foreign bills discounting on 23rd March, 2012 from the said Bank on

the basis of the documents submitted by the firm M/s. R.K. Behuria. As the said loan account remained irregular, it was declared as Non-Performing Asset (NPA) on 31st March, 2014 and having found the borrower to have played fraud with the bank in utilization of fund and submission of documents in availing the loan, the bank reported the same to Reserve Bank of India on 15th April, 2014.

4. According to the statement of the bank, an amount of Rs.12.18 crores is outstanding against M/s. R.K. Behuria towards loan as of 30th September 2022. It is further alleged that after availing the above loan facility Mr. R.K. Behuria had not utilized the said fund for the purpose it was sanctioned and dishonestly diverted the loan funds to various other entities which do not appear to be in the line of business of the borrower as declared by him while availing the loan and thereafter siphoned off the loan funds during the period 2009 to 2014.

5. It is also alleged that substantial amount of loan funds have been transferred to M/s. Rotomac Global PTE Ltd., and Rotomac Global Pvt. Ltd. Singapore, not being anyway connected with the line of business of the borrower. It is also alleged that the borrower firm represented by its proprietor Mr. R.K.Behuria along with other unknown persons/entities/unknown public servants in pursuance of a criminal conspiracy, with dishonest intention of causing wrongful loss to the bank and wrongful gain to themselves diverted/siphoned off the loan funds in favour of different entities and thereby

misappropriated the same by playing fraud with the bank and thereby are amenable to the offence alleged mentioned above.

6. In connection with the above, the Assistant General Manager (Branch Manager), Bank of Baroda, Barbil submitted a written report before the Superintendent of Police/HOB, Central Bureau of Investigation, Anti-Corruption Branch, Nayapalli, Bhubaneswar on 27th September, 2022 whereupon the above referred CBI, ACB, Bhubaneswar P.S. case was registered.

7. Learned counsel for the Petitioner, *inter alia,* submitted that there is absolutely no element as to fraud having been committed by the Petitioner with the Bank. He further submitted that the Bank initiated the recovery proceeding before the Debts Recovery Tribunal and nowhere in its averments before the Tribunal, the Bank alleged fraud to have been committed by the Petitioner save and except the prayer for recovery of the outstanding dues. Mr. Pradhan for the Petitioner also urged that M/s. R.K. Behuria is a bonafide borrower and availed cash credit limit for the purpose of his business which he continued having import and export transaction and accordingly the transaction in respect to the firm in Singapore is quite obvious and no manner of illegality can be attributed to it alleging siphoning/diverting off the fund and the transaction being undertaken between the year 2009 to 2014, there was absolutely no occasion for the Bank to proceed against the Petitioner on the plea of fraud to have been committed with the Bank after a lapse of five years.

8. Mr. Pradhan Learned counsel for the Petitioner drew the attention of the Court to the document submitted by the Bank along with the FIR and pointed out that as against the heading **"Recovery Action"** the bank declared to have made recovery from all the collateral securities given by the Petitioner firm in favour of bank at the time of availing loan and received Rs.3,50,50,698.60 from sale of collateral mortgage, (2) proceeds from the fixed deposit Rs.49,54,388/-, (3) other credit in the account of the firm Rs.10,55,230/- and from the savings account Rs.23,417/- and as such there was nothing to deduce any fraud to have been committed with the Bank inasmuch as the collateral securities stood with the Bank could be put to sale and a substantial part of the loan amount has already been recovered. Consequently, the present case has been hatched against the Petitioner with an ulterior motive just to cause harassment and the Petitioner as such is entitled to the prayer for anticipatory bail.

9. Mr. Nayak, learned counsel for the CBI, on the contrary vehemently opposed the contentions of the petitioner. He submitted that the Petitioner firm right from its inception while applying for the loan resorted to inflated figures in its sale/stocks/debtors against relying on forged documents more particularly the sales and purchase contract No.PGRPL/RKB/IOF/044/2013 dated 10.04.2013 showing the buyer to be M/s. Pacific Global Resources PTE Ltd., Singapore. It is also contended that the Petitioner having availed the loan diverted the funds in respect to M/s. Maa Samaleswari Iron and Steel Company Pvt. Ltd and M/s. Samaleswari Export Industries besides M/s.Rotomac Global Pvt. Ltd. and M/s. Rotomac

Global PTE Ltd., Singapore whose line of activities were not the same as that of the borrower against which he had availed the loan and thereby the transaction were suspicious leading prima facie to the conclusion that the Petitioner having knowledge that he was not to utilize the fund for the purpose the same he was to avail represented the Bank the falsity and managed to avail loan that was finally siphoned off otherwise then being utilized for the purpose it was availed.

10. Taking through the Court through the documents annexed to the FIR, Mr. Nayak contended that the act of the Petitioner in committing fraud with the Bank is tell tale clear as reveals from the documents as mentioned in the chart and as such the Petitioner has antecedent in committing such fraud earlier with the financial organization has rightly been agitated in the appropriate forum. He also submitted that that the recovery proceeding has been separately initiated before the DRT and the absence of averments as to the commission of fraud before the DRT cannot be taken to the advantage of the Petitioner inasmuch as both the proceedings would go separate and independent of each other.

11. The Apex Court in the case of ***P. Chidambaram v. Directorate of Enforcement*** reported in AIR 2019 SC 4198 held as under :

> "67. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion

conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy."

12. The Apex further held as under :

"76. Power under Section 438 Cr.P.C. being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In Directorate of Enforcement v. Ashok Kumar Jain (1998) 2 SCC 105, it was held that in economic offences, the accused is not entitled to anticipatory bail."

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79. 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. (2013) 7 SCC 439, 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 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."

13. It emerges from the case in hand that the Petitioner firm availed loan for the purpose it declared before the Bank and as such it was incumbent upon the Petitioner firm to utilize the loan fund in the business purportedly for which the loan was availed. As alleged herein by the Bank, there is ample of material prima facie indicating the Petitioner firm to have siphoned off the money transferring in favour of various firms. The fact that the transfer made in favour of the companies abroad are in line with the business of the Petitioner firm are matter of probe and examination during trial. The materials and documents that apparently discloses the funds to have been transferred is sufficient to indict the bonafideness of the firm as to if it acted in furtherance to the one it committed before the Bank and the purpose for which it availed the loan. Further, the Firm while remained irregular in its repayment in the loan account it engaged in transaction with the firms that prima facie suggest the conduct of the Petitioner abortive of its intention in availing the loan. The fact that the Bank proceeded for recovery of the loan is altogether a separate cause of action and cannot be expected averments to have been made with regard to the fraud. This is because the recovery proceeding was not on the ground of fraud but for the default on the

part of the Petitioner in the repayment of loan against securities. It is needless to mention that the transaction in question with which the Petitioner alleged to have committed fraud involves economic offence.

14. In essence, therefore, no material is available supporting the bonafide conduct of the Petitioner whereby this Court would be inclined to exercise the extra ordinary judicial discretion granting anticipatory bail to the Petitioner. The prayer for anticipatory bail, accordingly deserves no consideration. The ABLAPL stands dismissed.

(Chittaranjan Dash)
Judge

KC Bisoi/Secretary