IN THE HIGH COURT OF ORISSA, CUTTACK

ABLAPL No. 16826 of 2021

An application under section 438 of the Code of Criminal Procedure in connection with E.O.W Bhubaneswar P.S. Case No.16 of 2021 corresponding to C.T. Case No.6836 of 2021 pending in the Court of learned S.D.J.M., Bhubaneswar.

Srikant Prasad Prusty …….. Petitioner

-Versus-

State of Odisha & others …….. Opp. Parties

For Petitioner: - Mr. Devashis Panda
Advocate

For Opp. parties: - Mr.D.K. Pani
Addl. Standing Counsel

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Argument & Date of Order: 16.02.2022

S. K. SAHOO, J. Heard Mr. Devashis Panda, learned counsel for the petitioner and Mr. D.K. Pani, learned Additional Standing Counsel for the State.

2. This is an application under section 438 of Cr.P.C. for grant of anticipatory bail to the petitioner in connection with E.O.W. Bhubaneswar P.S. Case No.16 of 2021 corresponding to

C.T. Case No.6836 of 2021 pending in the Court of learned S.D.J.M., Bhubaneswar for the commission of the alleged offences punishable under sections 420, 467, 468, 471, 120-B of the Indian Penal Code.

3. The case of the prosecution, in short, is that one Prasanta Kumar Mohapatra lodged a written report before the Superintendent of Police, E.O.W., Bhubaneswar on 08.12.2021 to the effect that the petitioner along with two other officers of Punjab National Bank of Bapuji Nagar Branch (hereafter in short, the 'Bank') connived with each other in order to give financial assistance to the partners of M/s. Lingaraj Enterprises, namely Mr. Mashood Khan and Mrs. Krishna Beni Dash to the extent of Rs.3,68,78,030.98 (rupees three crores sixty eight lakhs seventy eight thousand thirty and ninety eight paise) by applying fraud. The informant initially approached the Chief Manager of the Bank, namely, Birendra Pattnaik for availing a loan facility for his necessity, who advised him to meet the petitioner, who was the then Senior Manager and also one Narendra Nayak, the Field Officer of the Bank. As per the requirement of the Bank, the informant submitted the required documents, which were duly verified by Narendra Nayak, the Field Officer of the Bank, who assured him to sanction the loan and accordingly, the properties

of the informant were valued by the empanelled engineer of the Bank, namely, Sri N.K. Mohanty. As per the advice of the aforesaid officers of the Bank, the informant submitted a declaration of assets and liabilities and the petitioner along with other Bank officials submitted a form of declaration and the informant signed the same in the specified column. The informant also filed an affidavit stating therein to mortgage the properties for the purpose of availing the loan and all the three brothers of the informant also signed the affidavit. It is the case of the informant that the petitioner along with the Field Officer Narendra Nayak took all the original documents from him and told him that those were required for creation of mortgage to avail the loan. The Chief Manager of the Bank, namely, Birendra Pattnaik also handed over an agreement of guarantee to the informant and advised him to sign the same and accordingly, the informant along with his three brothers signed in the guarantee form and the columns in the guarantee form were left blank by that time. It is the further case of the informant that after handing over all the documents to the Bank, a sum of Rs.10 lacs (rupees ten lakhs) was credited to his account and all the aforesaid three Bank officials gave him an impression that only Rs.10 lacs was sanctioned and since he was badly in need of money at that time, he did not make any query to that effect. Subsequently, the informant came to know that a sum of Rs.3,68,78,030.98 (rupees three crores sixty eight lakhs seventy eight thousand thirty and ninety eight paise) has been sanctioned in favour of M/s. Lingaraj Enterprises by applying fraud by taking the land documents of the informant. According to the informant, the aforesaid three persons dishonestly and fraudulently utilized his land documents to give financial assistance to M/s. Lingaraj Enterprises for the reasons best known to them even though he did not know any M/s. Lingaraj Enterprises. The informant prayed for necessary legal action against the culprits.

On receipt of the first information report, E.O.W Bhubaneswar P.S. Case No. 16 dated 08.12.2021 was registered under sections 420, 467, 468, 471 read with section 120-B of the Indian Penal Code against the petitioner, Chief Manager Birendra Pattanaik, Field Officer Narendra Nayak and M/s. Lingaraj Enterprises represented through its partners Mashood Khan and Mrs. Krishna Beni Dash.

During investigation, it was found that for the renovation of his two duplexes located at Balianta, the informant was seeking for loan amount of Rs. 10 lakh from the Bank and during the month of October/November 2017, the informant handed over all the documents in respect of the two flats to the petitioner which were verified by the co-accused Field officer and the petitioner assured the informant to sanction the loan. The informant as per the direction of the Bank officials submitted a declaration of assets and liabilities, a form of declaration etc. which were signed in the specified column. An affidavit was also filed by the informant and his three brothers stating therein to mortgage for the purpose of availing loan. The other three brothers of the informant also came to the Bank and signed in the relevant column of the documents, which was blank then at the instance of the petitioner and others. On 26.12.2017 an amount of Rs.10 lakh was credited in the account of the informant from the account of M/s. Azile Trading Marketing Pvt. Ltd. During November 2018, the informant and his brothers received notices under section 13(2) of SARFESI Act, 2002 from the Bank being the guarantors of the outstanding loan amount of Rs.3,60,43,762.42 paise of M/s. Lingaraj Enterprises and regarding mortgaging of their property as collateral security. It was found that without the knowledge of the informant, his property has been fraudulently mortgaged in a CC loan availed by M/s. Lingaraj Enterprises through its partners and the same was recommended by the petitioner and another Manager Narenda Nayak and sanctioned by the Chief Manager. During investigation, it also came to light that the petitioner and other Bank officials were also involved in E.O.W. case No. 07 of 2020 regarding granting of fraudulent sanction of CC loan of Rs.2.5 crores to M/s. K.P. Solutions during 2017 for which the petitioner was taken into custody and forwarded to Court on 15.09.2020 and in that case, charge sheet was submitted under sections 406, 419, 420, 467, 468, 471, 120-B of I.P.C against the petitioner and others. The documents signed by the informant for his own loan were fraudulently used by the petitioner and other Bank officials as genuine documented for the alleged loan sanctioned in favour of M/s. Lingaraj Enterprises. The I.O. found prima facie evidence against the petitioner and others under sections 420, 409, 467, 468, 471, 120-B of I.P.C.

4. Mr. Devashis Panda, learned counsel for the petitioner submitted that M/s. Lingaraj Enterprises is a registered partnership firm having current account at HDFC Bank prior to sanction of CC (H) facility of Rs.3.50 crores by the Bank. The above loan was sourced through Mr. Neeraj Kumar, Chartered Accountant who was the Manager Credit at Punjab National Bank, Saheed Nagar Branch, Bhubaneswar and resigned in the year

2017 and he had worked under Mr. Birendra Pattnaik, who was the Branch Manager at Punjab National Bank, Saheed Nagar Branch, Bhubaneswar and had started his consultancy office at Bhubaneswar. Learned counsel further submitted that the petitioner had done the field verification of the property on 28.11.2017 and the loan was sanctioned to M/s. Lingaraj Enterprises on 29.11.2017 wherein the petitioner was the recommending official, Sri Narendra Nayak (Manager) and Sri Birendra Pattnaik (Chief Manager-cum- Branch Head) were the joint sanctioning authority of the Branch Office, Bapuji Nagar. It is further submitted that the sanction letter was duly signed by the Branch Head and accepted by both the partners of the firm, i.e. Mashood Khan and Ms. Krishna Beni Dash. It is further submitted that no loan application has been submitted by the informant before the Bank for any type of loan as mentioned in the F.I.R. and the informant had also not mentioned the loan amount in his F.I.R. It is further submitted that as per the banking Regulation, the customer has to apply loan through a duly filled application and duly signed by the customer and addressed to the concerned Branch and after receiving the same, the Bank shall submit an acknowledgment of the same to the customer, but in the instant case, no loan application has been submitted by the customer and no acknowledgment has been issued by the Branch to the customer. It is further submitted that the Guarantee Agreement dated 30.11.2021 has been signed by Prasanta Kumar Mohapatra (the informant) and his three brothers, namely, Sumanta Kumar Mohapatra, Susanta Kumar Mohapatra and Ananta Kumar Mohapatra along with the partners, i.e. Mashood Khan and Krishna Beni Dash and other mortgagor Smt. Kunjalata Parida (owner of Gopalpur Mouza Property) and Sri Radhashyam Garabadu (owner of property near Lingaraj Temple, Bhubaneswar). Learned counsel further submitted that as the loan goes bad, the property of the guarantors mortgaged to the Bank would be sold along with the other remaining liability of the borrower. It is further submitted that the guarantee agreement has clearly mentioned the purpose of guarantee, i.e. loan facility of Rs.3.50 crores for M/s. Lingaraj Enterprises and in order to save his property from auction, the informant has cooked up a story against the petitioner and other bank officials. It is further contended that the letter of acceptance dated 29.11.2017 of Rs.3.50 crores had been duly signed by all the four brothers as the guarantors and before execution of the letter of acceptance, the guarantors had gone through it, from which it clearly reveals that they have fully understood the terms and conditions of the guarantee deed. It is further submitted that the letter of intent dated 12.12.2017 to mortgage for Rs.3.50 crores by all four brothers including the informant is a vital document, which is required as per the SARFAESI Act. It is further stated that the letter of intent dated 12.12.2017 is the authorization by the mortgagors showing their intent for mortgaging the property and all the four brothers have signed on the said document, which is required to be submitted for creation of equitable mortgage before the Bank. It is further contended that no sanction letter for loan of Rs.10.00 lakhs had ever been issued by the Bank in favour of the informant and the sanction letter is the most important document which is conveyed to the borrower for sanction of loan incorporating details of terms and conditions. Learned counsel further submitted that in the instant case, the loan was never sanctioned in favour of the informant and no sanction letter was issued by the Bank in the name of the informant and his three brothers and therefore, the allegations against the petitioner are completely false and baseless. Learned counsel further submitted that for sanction of loan, the customer/informant must execute certain documents for loan facility of Rs.10.00 lacs, but in the instant case no document has been executed in favour of the informant for loan worth of Rs.10.00 lacs. It is further submitted that neither any loan account has been opened in the name of the informant nor in the name of his three brothers for sanction of Rs.10.00 lacs as loan. The allegation of the informant that he had received only Rs.10.00 lacs from the Bank against his mortgaged property is not correct and not a single pie has been disbursed from Bank in to the account of the informant. It is further submitted that the Asset Liability Statement is one of the most important documents, which is required to be obtained prior to obtaining the loan facility and all the four brothers have signed in their respective Asset Liability Statements and there has been no mention of the purpose of loan facility for availing Rs.10.00 lacs. Learned counsel further submitted that the Bank's empanelled valuer M/s. N.K. Mohanty had given his valuation report of mortgaged property to the tune of Rs.126.00 lacs, clearly mentioning the purpose of valuation, i.e. for mortgaging the property on behalf of M/s. Lingaraj Enterprises. It is further submitted that the associate valuer on personal visit of the property had made the valuation, but at no point of time the informant or his three brothers raised any objection with regard to the valuation report. It is further submitted that as per the norms of the Bank, the Bank's empanelled Advocate Sri Aditya

Narayan Mishra has given the legal opinion after going through the documents and verifying the details from the respective Tahasil office and had also had conference with the informant and his three brothers regarding the purpose of legal opinion i.e. for mortgaging the property on behalf of M/s. Lingaraj Enterprises. Learned counsel further submitted that the allegations made in the F.I.R. are completely false and the same has been foisted against the petitioner and other bank officials with the sole purpose of stopping the auction process of the mortgaged property against the loan sanctioned by the Bank. Learned counsel further submitted that the petitioner is working as a Senior Manager, Punjab National Bank, Jagamara, Bhubaneswar and in the event, he is arrested in connection with the case, he would be seriously prejudiced and therefore, the anticipatory bail application may be favourably considered.

5. Mr. D.K.Pani, learned counsel for the State, on the other hand, opposed the prayer for bail and submitted that huge amount of money is involved in the case and it is an economic offence and custodial interrogation of the petitioner is very much necessary to unearth the truth. He argued that documents have been fraudulently placed before the Bank and the signatures of the informant and his brothers were taken in the relevant

guarantee form and other documents for their consent as guarantor/mortgagor, which facilitated disbursement of CC loan of Rs.3.50 crores (rupees three crores fifty lakhs) in favour of M/s. Lingaraj Enterprises. It is further contended that the accused Bank officials fraudulently diverted Rs.10 lacs to the account of the informant routing it through the account of the co-accused Prakash Kumar Behera, made the informant believe that he had received the amount against the loan applied by him and out of the C.C. loan of Rs.3.5 crores availed by M/s. Lingaraj Enterprises through its partners, an amount of Rs.1.35 crores was diverted to the account of co-accused Prakash Kumar Behera. Learned counsel for the State has produced the instruction received from the Inspector, E.O.W., Bhubaneswar, who is the Investigating Officer of the case, which indicates that since prima facie evidence against the co-accused persons were made out, they were arrested and forwarded to judicial custody and the petitioner, who was the Senior Manager of the Bank along with other officials of the Bank are involved in many such fraudulent loan sanction cases of the Bank and their involvement in other cases are under investigation and many more witnesses are yet to be examined and the investigation is open to find out the money trail. It is highlighted that the custodial interrogation of the petitioner is very much required for the purpose of investigation and therefore, the petitioner should not be released on anticipatory bail. The instruction received by the learned counsel for the State from the I.O. is taken on record.

6. This is a case of economic offence. Economic offences are always considered as grave offences as it involves deep rooted conspiracy and huge loss of public fund. Such offences are committed with cool calculation and deliberate design solely with an eye on personal profit regardless of the consequence to the community. It brings about total imbalance in the economy of the country, which has the effect of making lives of people economically weaker and miserable. Such offences are treated worse than murders. In such type of offences, while granting bail, the Court has to keep in mind, inter alia, the larger interest of public and State. The nature and seriousness of an economic offence and its impact on the society are always important considerations in such a case and those aspects must squarely be dealt with by the Court while passing an order on bail applications. (Ref: **State of Gujarat -Vrs.- Mohanlal Jitamalji Porwal and another reported in (1987) 2 Supreme Court Cases 364**, **Y.S. Jagan Mohan Reddy -Vrs.- CBI reported in (2013) 7 Supreme**

Court Cases 439 and **Aswini Kumar Patra -Vrs.- Republic of India reported in (2021) 84 Odisha Criminal Reports 1**.

7. It is the settled law that detailed examination of evidence and elaborate discussion on merits of the case should not be undertaken while adjudicating a bail application. The nature of accusation, the severity of punishment in case of conviction, the nature of supporting evidence, the criminal antecedents of the accused, if any, reasonable apprehension of tampering with the evidence of the witnesses, apprehension of threat to the witnesses, reasonable possibility of securing the presence of the accused at the time of trial and above all the larger interest of the public and State are required to be taken into account by the Court while granting bail.

In the case of **P.Chidambaram -Vrs- Directorate of Enforcement reported in (2019) 76 Orissa Criminal Reports 498,** it has been held as follows:

> "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 the 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."

x x x x x x x x

81. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. x x x "

8. Considering the submissions made by the learned counsel for the respective parties, the nature and gravity of accusation against the petitioner, the nature of punishment

prescribed for the offences, since the investigation is at the nascent stage and the petitioner is involved in similar such cases in which investigation is under progress and in one of such similar case, charge sheet has been filed against the petitioner and there is reasonable apprehension of tampering with the evidence of the witnesses, who are yet to be examined and moreover there is necessity of custodial interrogation in the case as indicated by the I.O. in his report to unearth several important aspects of the case and since it is an economic offence and above all in the larger interest of society, I am of the humble view that grant of anticipatory bail to the petitioner would cause serious prejudice to the free, fair and full investigation and therefore, while not inclining to grant anticipatory bail to the petitioner, it is observed that in the event the petitioner surrenders and moves for bail in the Court below within a period of four weeks from today, the same shall be disposed of by the learned Courts below in accordance with law expeditiously. The case records shall be made available to the Courts concerned for disposal of the bail application.

Accordingly, the ABLAPL stands disposed of.

Issue urgent certified copy as per Rules.

Let a free copy of the order be handed over to the counsel for the State.

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S.K. Sahoo, J.

Orissa High Court, Cuttack
The 16th February 2022/PKSahoo