

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**BLAPL No.11614 of 2021**

***Susanta Kumar Dhalsamta &  
another***

***.... Petitioners***

*M/s.S.K.Padhy, Advocate*

***-versus-***

***State of Orissa***

***.... Opp. Party***

*M/s.S.S.Pradhan, A.G.A.*

**CORAM:**

**JUSTICE G. SATAPATHY**

**ORDER**

**26.10.2022**

**Order No.**

- 04.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
  2. This is an application U/S. 439 of Cr.P.C. by the Petitioners for grant of bail in connection with Chauliaganj P.S. Case No.35 of 2016 corresponding to S.T. Case No.273 of 2016 pending in the Court of learned Addl. District & Sessions Judge, Cuttack for commission of offence punishable U/Ss. 489-B/ 489-C/34 of I.P.C. on the allegation of exclusively possessing hard cash of Rs.2,67,64,740/- (Rupees two crores sixty seven lakhs sixty four thousand and seven hundred forty) only in the form of different denominations of currency notes at their places of stay.
  3. In the course of hearing of the bail application, Mr. Saroj Kumar Padhy, learned counsel for the petitioners submits that the petitioners have been taken into custody in this case on 08.04.2016 but the currency notes were seized on 30.01.2016 although the petitioners were in custody at the time of recovery of such notes in another case and the aforesaid facts by itself falsify the prosecution case not only for showing recovery of such huge amount from the house of the petitioners in their absence but also for keeping such currency notes by the I.O. in his custody without following due procedure of sealing. It is also submitted that no material has been collected by the investigating agency to show that the petitioners had ever

used the fake or counterfeit currency notes as genuine nor was there any material to establish that the counterfeit currency notes were recovered from the exclusive possession of the petitioners, as the petitioners were inside the jail custody at that time. It is further submitted that the petitioners have already been detained in custody for around more than six and half years in this case and the offences alleged against the petitioners being U/Ss. 489-B/ 489-C/34 of I.P.C. which are punishable with maximum imprisonment of ten years and therefore, by virtue of Section 436-A of Cr.P.C. the petitioners are entitled to bail at least on this ground. It is also submitted on behalf of the petitioners that although the petitioners have been stated to be involved in more than two dozen of cases but such cases against the petitioners have to be considered on the basis of materials placed on record and the petitioners having remained in custody for more than six years are deprived of their personal liberty and the trial having not progressed appropriately, the petitioners right to speedy trial has been seriously infringed in view of the fact that six out of fourteen witnesses have been examined till today as per the report furnished on behalf of the State. On the above grounds, learned counsel for the petitioners urges before this Court to grant bail to the petitioners on any condition as deem fit and proper.

4. On contrary, Mr.S.S.Pradhan, learned counsel for the State submits that the petitioners are not only history-sheeter but also are involved in some heinous crimes and a number of cases are pending against the petitioners. In support of his contention, learned counsel for the State has also produced a status report of different cases pending against the petitioners. It is also submitted that out of the seized currency notes from the house of the petitioners, a number of currency notes were found to be counterfeit and fake and the petitioners being gangsters are not only able to influence the witnesses but also can manipulate the evidence to be tendered in this case. It is further submitted that the offence U/S. 489-B of

I.P.C. prescribes maximum punishment of imprisonment for life and therefore, Section 436-A of Cr.P.C. is not applicable for grant of bail to the petitioners. In summing of his argument, learned counsel for the State prays to reject the bail application of the petitioners.

5. After having considered the rival submissions of the parties upon reference to the allegations on record, there appears allegation of seizure currency notes of different denominations amounting to Rs.2,67, 64,740/- from the houses of the petitioners. It is also no doubt true that the petitioners have placed the provision of Section 436-A of Cr.P.C. for their release on bail on the ground of suffering incarceration for more than half of the punishment prescribed for the offences alleged against them but Section 489-B of I.P.C. for which the petitioners have been charged in this case is punishable with maximum imprisonment for life and even if by applying the provision of Section 57 of I.P.C. the half of the punishment prescribed for offence U/S. 489-B of I.P.C. would come to ten years with which the petitioners have not yet undergone. Further, the first proviso to Section 436-A of Cr.P.C. also confers discretion on the Court to order the continued detention of such person for a period longer than one half of the said period for reasons to be recorded in writing after hearing the Public Prosecutor. The status report as produced by the State itself indicative of pendency of twenty two criminal cases against petitioner No.1 and fifteen criminal cases against petitioner No.2 and the aforesaid conduct of the petitioners for pendency of number of cases evokes a bonafide and reasonable apprehension of fear against the free and fair trial if the petitioners are allowed to go on bail and there appears likelihood of petitioners influencing the material witnesses. While considering the bail, the pendency of criminal antecedent of the persons accused of offences cannot be considered lightly which stands in the way of free and fair trial for material witnesses likely to be influenced.

6. Learned counsel for the petitioners has also advanced that the

liberty of the petitioners have seriously being curtailed in this case but addressing such contention, there is no denying the fact that liberty of an individual is precious and is to be protected scrupulously by the Courts. However, such protection cannot be absolute in every situation and the valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigency of a case. Needless to say that the liberty is not only paramount but also sacrosanct in a civilized society. In a Democratic country like ours which is governed by the rule of law, and individual is expected to grow up with larger societal interest and the restriction sanctioned by law and the deprivation of liberty must have due sanction of law. The liberty of an individual is not absolute in every case but is restricted one. The petitioners in this case having allegedly found involved in a number of cases cannot be said to have deprived of their personal liberty which is according to the procedure established by law. The allegations levelled against the petitioners in this case itself disclose about commission of economic offences which should not be considered lightly while granting bail since economic offences constitute a class apart and need to be visited with different approach in the matter of bail and the same are considered as grave offences affecting the economy of the country.

7. In view of the above facts and taking into consideration the conduct of the petitioners and the nature and gravity of the offences alleged against them and keeping in view the background of alleged commission of crime, this Court does not consider it proper to grant bail to the petitioners. Hence, the prayer for bail of the petitioners stand rejected.

8. Accordingly, the BLAPL stands disposed of.

9. Urgent certified copy of the order be granted on proper application.

