



IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.565 of 2024

Surjit Kumar Dhal

.....

Petitioner

Represented By Adv. –
Mr. Bishnu Prasad Pradhan

-versus-

State Of Odisha (EOW)

.....

Opposite Party

Represented By Adv. –

Mr. P.C. Das, A.S.C.

Mr. Arun Kumar Budhia,
Advocate for the Informant

CORAM:

THE HON'BLE MR. JUSTICE ADITYA KUMAR MOHAPATRA

ORDER

18.04.2024

Order No.

- 08.
1. The Petitioner, who is a Senior Journalist having 20 years of experience in his profession and presently working as the Editor-in-Chief of an Online News Portal “Reporters Today” and Editor-in-Chief of Odia Daily “Mahabharat”, has approached this Court by filing the present bail application challenging rejection of his bail application vide order dated 12.01.2024 passed by the learned Presiding Officer, Designated Court under the OPID Act, Cuttack, arising out of Economic Offence Wing Bhubaneswar P.S. Case No.26 of 2023, corresponding to C.T. Case No.125 of 2023 for commission of offence punishable under Sections 420/467/468/471/506 of the I.P.C.
 2. The prosecution case as unfurled from the F.I.R. allegation



is that the Informant, namely, one Kalinga Keshari Rath has a real estate business since last 12 years. It further appears that he has various projects in and around Bhubaneswar and Puri. In connection with his real estate business, the petitioner is required to obtain various clearances/approvals from the Government/agencies/authorities for his construction work. In April, 2023, the Informant came in contact with the present Petitioner, who had come to the Informant in connection with booking of a flat through a property broker. During such conversation with the Informant, the Petitioner introduced himself as a Senior Journalist and that he is interested in booking two flats for his upcoming projects. As per the allegations made in the F.I.R., the Petitioner gave an impression that he has good rapport with highly placed Government officials and that he could easily get the official works of the Informant done. Believing the words of the Petitioner, the Informant entrusted some of his official works pertaining to environment clearance, pollution certificate and Government/Authorities approval for his future projects.

3. In course of such conversation with the Petitioner, the Informant expressed before the Informant that he is interested in launching a new T.V. channel and for such purpose, he needs funding from the Informant.

4. It has also been alleged that the Petitioner tried to intimidate the Informant by citing his connection with highly placed officers. Accordingly, the Informant paid a sum of Rs.30



lakhs in cash to the Petitioner and Rs.10 lakhs through account transfer. Out of the aforesaid Rs.10 lakhs, a sum of Rs.6.5 lakhs has been directly transferred to the account of “Reporters Today”. From his company account a sum of Rs.3.69 lakhs have been credited to the account of two different agencies at the instance of the present Petitioner. Thereafter, the Petitioner asked the Informant to pay him a sum of Rs.60 lakhs for the purpose of paying such amount to the highly placed Government officials to get the work of the Informant done through them. It has also been alleged that the Informant being lured by the Petitioner and his words paid the aforesaid sum on different occasions with the hope that the Petitioner would get his projects approved from various agencies and authorities of the Government. It has also been alleged that the Petitioner asked the Informant to provide two luxurious cars in order to get the work done which was complied to by the Informant by providing one Mercedes and one Audi Car to the Informant.

5. While the matter stood thus, the Informant inquired about the progress of the work from the present Petitioner. However, the Petitioner was taking time by citing one plea or the other on every such occasion. It has also been alleged that at the later stage the Petitioner gave a fake BDA approval to the Informant in respect of a project for which he had taken money. On getting such approval later, the Informant became suspicious, as a result of which, he enquired from the competent authority and, as such, came to know that the approval letter is a forged document.



Immediately thereafter the Informant asked the Petitioner to return the money and two cars. However, the Petitioner did not heed to such request of the Informant. Finally, on 01.11.2023, when the Petitioner instead of returning the money threatened the Informant, the Informant was compelled to lodge a F.I.R. against the present Petitioner.

6. After the F.I.R. was lodged in the present case making allegation of commission of offence under Sections 420/467/468/471/506 of the I.P.C., the Petitioner initially moved this Court by filing the anticipatory bail vide ABLAPL No.13808 of 2023. A coordinate Bench of this Court vide order dated 13.12.2023 was pleased to reject such bail application of the Petitioner with an observation that the case of the Petitioner is not a fit case to release the Petitioner on anticipatory bail in exercise of power conferred under Section 438 of Cr.P.C. and that the investigation is on-going and at a nascent stage and, as such, granting pre-arrest bail would thwart the progress of the investigation. Being aggrieved by such rejection order, the Petitioner has approached the Hon'ble Supreme Court by filing SLP No.16672 of 2023. The Hon'ble Supreme Court vide order dated 30.01.2024 dismissed the SLP filed by the Petitioner wherein it was observed that there is no reason to interfere with the impugned order dated 13.03.2023 passed by a coordinate Bench of this Court in ABLAPL No.13808 of 2023.

7. Learned counsel for the Petitioner submitted that the Petitioner is languishing in jail custody since 06.01.2024 and that



the investigation in this case has progressed substantially and the final charge sheet is likely to be filed very soon. It was also contended that the custodial interrogation of the Petitioner has already been concluded. Therefore, further detention of the Petitioner in judicial custody would not improve the case of the prosecution and the same will not be helpful for the prosecution in any manner. Learned counsel for the Petitioner also contended that on a careful reading of the F.I.R., the same would give an impression that the dispute is between two private individuals and that in view of the settled position of law, such private disputes cannot be settled in the guise of a criminal case of present nature. Furthermore, it was also contended that the initiation of the criminal case against the Petitioner is nothing but an abuse of process of law. He further contended that in the present dispute although allegation made in the F.I.R. involves cheating and forgery, however, no public money is involved in such transaction.

8. Learned counsel for the Petitioner further contended that the Petitioner is an established Journalist of the State and he has been languishing in jail custody for almost three months. He further contended that all the offenses are triable by the Magistrate First Class. It was also emphatically contended that the Petitioner has been falsely implicated in the present case to settle some personal score and that the Petitioner does not have any criminal antecedent. On the contrary, it was alleged that the Informant is involved in 16 criminal cases which has been



narrated in para-9 of the bail application. In course of his argument, learned counsel for the Petitioner further contended that the Informant, who is the Managing Director of M/s. Evos Buildcon Pvt, Ltd., was in regular contact with the present Petitioner. In fact they both had planned to launch a T.V. Channel jointly. It was further contended that pursuant to such decision, the Informant had invested a sum of Rs.10 lakhs which has been admittedly transferred to the account of the present Petitioner. With regard to payment of the balance amount, learned counsel for the Petitioner seriously disputed the same by saying that the Informant has not produced a single scrap of paper to establish the fact a payment of a sum of Rs.90 lakhs was made to the petitioner as claimed by him in the F.I.R. So far the two persons, who are stated to be witnesses to such payment of money are concerned, namely, Sahadev Nayak and Prahalad Nayak, who have stated in their statement recorded under Section 161 of Cr.P.C. that the Petitioner had taken Rs.90 lakhs from M/s. Evos Buildcon Pvt, Ltd., are in fact the employees of the Informant. Apart from the statement of the aforesaid two persons, there is no other evidence with regard to the payment of the claimed amount of Rs.90 lakhs by the Informant. He further contended that payment of a sum of Rs.90 lakhs in cash is not permissible under Section 269SS of the Income Tax Act. It was also submitted by the learned counsel for the Petitioner that there is nothing on record to establish that the aforesaid sum of Rs.10 lakhs was paid to the Petitioner for any illegal purpose and that the burden is on the Petitioner to establish that such money was



in fact paid for an illegal purpose. On the contrary, learned counsel for the Petitioner contended that the aforesaid amount was paid pursuant to an agreement between the parties to establish new T.V. Channel.

9. With regard to the second allegation of producing a forged clearance certificate, learned counsel for the Petitioner submitted that as per the prosecution allegation, the entire amount was paid in the month of June, 2023. However, the prosecution has also alleged that the forged approval letter of the BDA dated 25.05.2023 was handed over to the Informant in May, 2023. In such view of the matter, learned counsel for the Petitioner submitted that such an allegation is unbelievable. It was also alleged by the learned counsel for the Petitioner that the aforesaid forged BDA approval letter has not been recovered from the Petitioner. He further expresses his doubt with regard to the conduct of the prosecution agency by submitted that although F.I.R. was registered on 14.11.2023 at about 7.00 P.M. whereas the clarificatory letter from the BDA dated 15.11.2023 was received only on 15.11.2023 stating therein that the letter dated 25.05.2023 is a forged one. Therefore, it is alleged that the Informant is hand in gloves with the Investigating Officer and the entire prosecution story is a false and fictitious one only to harass the present Petitioner.

10. With regard to refund of the aforesaid amount of Rs.10 lakhs which has been paid to the Petitioner by the Informant, learned counsel for the Petitioner submitted that non-refund of



such amount ipso facto does not constitute an offence under the criminal law. At best the same can be construed as a non-performance of the contract on the part of the Petitioner. Therefore, the dispute is basically civil in nature. However, by filing the present F.I.R. the Informant in collusion with the Investigating Officer is trying to give it the colour of a criminal case only with intention to harass the present Petitioner and to humiliate him in public and thereby tarnish the image of the present Petitioner. In the aforesaid context, learned counsel for the Petitioner referred to the judgment of the Hon'ble Supreme Court in the case of *Indian Oil Corpn. v. NEPC India Ltd.*, reported in (2006) 6 SCC 736; *Mithilesh Kumar J. Sha v. The State of Karnataka and Ors (Criminal Appeal No. 1285 of 2021, arising out of S.L.P (Crl.) No. 9871 of 2019)*; and in *Vijay Kumar Ghai v. State of West Bengal*, reported in (2022) 7 SCC 124.

11. Learned counsel for the Petitioner further argued that although the offence alleged is a private dispute between the parties as is evident from a plain reading of the F.I.R., however, the I.O. in collusion of the Informant is trying to give it a colour of an economic offence to make it look serious. He further submitted that even assuming that the allegation is true, the Hon'ble Apex Court has time and again reiterated that in case of an economic offences, when the investigation is complete/at fag end, the custody of the accused may not be necessary for further investigation. Since the investigation in the present case is at fag end, the custodial detention of the Petitioner would not be



required. In the aforesaid context, learned counsel for the Petitioner relied upon the judgment of the Hon'ble Supreme Court in *Satender Kumar Antil v. CBI*, reported in (2021) 10 SCC 773. In course of his argument, learned counsel for the Petitioner further reiterated the well settled principle that the bail is the rule and jail is an exception. Furthermore, referring to Article 21 of the Constitution of India as has been interpreted by the Hon'ble Supreme Court in *Sanjay Chandra v. The Central Bureau of Investigation*, reported in 2012 (1) SCC 401, learned counsel for the Petitioner submitted that until and unless the custody becomes so inevitable, the detainee has right guaranteed under Article 21 of the Constitution of India and that the same cannot be suspended in a routine manner. In the aforesaid context, learned counsel for the Petitioner specifically referred to para-21 of the judgment in *Sanjay Chandra Das's* case (supra). He further emphatically submitted that further continuance of the Petitioner in judicial custody would definitely amount to pre-trial conviction. It was also contended that since the Petitioner is a permanent resident of Bhubaneswar City, there is no chance of absconding and fleeing away from justice and in the event this Court is inclined to release the Petitioner on bail, he is ready and willing to abide by any terms and conditions that would be deemed just and proper by this Court. He further contended that the Petitioner does not have any criminal antecedent.

12. Learned counsel appearing for the Informant, on the other hand, contended that the Informant, who is in real estate



business, has reason to believe that the Petitioner in the grab of a Media Reporter has committed an offence of cheating and criminal breach of trust and thereby duped the Informant to the tune of Rs.1 Crore. It was also argued by the learned counsel for the Informant that since the Petitioner is involved in an economic offence and, considering the seriousness and gravity of the allegation made in the F.I.R., the Petitioner is not entitled to be released on bail. He further contended that the Informant has been exploited by the Petitioner for the petitioner's wrongful gain and that the dishonest and wrongful intention of the Petitioner can very well be inferred from his conduct as has been alleged in the F.I.R. The alleged offence is a part of deep rooted criminal conspiracy to cheat the Informant. Although, the learned counsel for the Informant argued that the Investigating Agency is required to unearth the corruption prevailing in different public offices of the Government in course of investigation. However, when question was asked by this Court as to whether the purpose for which the alleged money was paid to the Petitioner is lawful, learned counsel for the Informant could not provide any satisfactory answer to the same. In course of his argument, learned counsel for the Informant referred to the judgment of this Court in *Maheswar Sahu v. State of Orissa* bearing BLAPL No. 3584 of 2021 and disposed of on 10.12.21, wherein a coordinate Bench of this Court has categorically observed that the case is glaring example of unfair exploitation of the depositors and mysteriously cheating them of their dreams of having their own houses. Although on a careful analysis of the said judgment, this



Court is of the view that the facts of the above cited judgement and the present case are quite different.

13. It was also alleged by the learned counsel for the Informant that the Petitioner has access to the public offices and records and that he has a protection of powerful people sitting in the different public offices in the State of Odisha. He has also alleged that corruption has become the way of life and, accordingly, went on to submit that there exists a necessity to constitute a Lokayukta. It was also argued that the enlargement of the Petitioner on bail will sabotage the prosecution case and that in the event the Petitioner is released on bail, there is every possibility that he might tamper with the prosecution evidence.

14. In course of his argument, learned counsel for the Informant also emphasised that the nature of offence alleged in the F.I.R. constitutes an economic offence. He further contended that a clear case of criminal intimidation, exploitation, cheating and criminal breach of trust is well made out against the present Petitioner. He further submitted that as mandated by Hon'ble Supreme Court in the case of *Samsul Amal Khan Amit Sharma v. Union of India (SLP (Crl.) No.12626 of 2022)*, the Petitioner is not entitled to be released on bail at this juncture. In the context of forged documents, learned counsel for the Informant submitted that the Informant produced a forged document of BDA to the Informant and that it is required to be investigated as to how so many of such forged approvals have been procured by the Petitioner for others and how much money has been taken



from such persons. Going by the allegation made in the F.I.R., this Court is of the view that such question is hypothetical in nature, although, it is open to the Investigating Agency to enquire into such aspect of the matter in course of the investigation. So far the F.I.R. in the present case is concerned, the allegation by the Informant is with regard to cheating by the present Petitioner.

15. Learned counsel for the Informant in his note of argument has also referred to the case of *Manish Sisodia v. CBI (Criminal Appeal a/o. of SLP (Crl.) No. 8167 of 2023 & Anr)* as decided by the Hon'ble Supreme Court. On a careful examination in the aforesaid case, this Court is of the view that the aforesaid case was registered under the PMLA Act and the facts of the said case are quite different than the facts of the present case. Therefore, the judgment in the case of *Manish Sisodia* as referred by the learned counsel for the Informant would not be applicable to the Petitioner's case. He has also referred to the judgment of *Prakash Singh v. Union of India* reported in *(2006) 8 SCC 1*, while opposing the bail application of the present Petitioner. On such ground, learned counsel for the Informant submitted that the Petitioner should not be enlarged on bail and, accordingly, his bail application should be rejected.

16. Learned Additional Standing Counsel appearing on behalf of the State-Opposite Party also objected to the release of the Petitioner on bail at this juncture. Learned Additional Standing Counsel while supporting the stand and the ground raised by the learned counsel for the Informant, submitted that the final charge



sheet has not been filed yet. Therefore, the release of the Petitioner at this juncture would be detrimental for early conclusion of the investigation. Learned Additional Standing Counsel further contended that the allegations made in the F.I.R. are very serious in nature. It was also contended that as per the F.I.R. allegation, an amount of Rs.1 Crore has been duped by the present Petitioner from the Informant in the garb of getting approval/clearance from the Government agencies/authorities. Thus, the allegations made in the F.I.R. are quite serious and needs to be investigated thoroughly. In course of his argument, learned Additional Standing Counsel further contended that it has been ascertained from the BDA authority vide their letter dated 15.11.2023 that the BDA approval letter dated 25.05.2023 which has been given to the complainant by the Petitioner is a forged one. He further contended that earlier the anticipatory bail application of the Petitioner was rejected by this Court which has been ultimately affirmed by the Hon'ble Supreme Court of India.

17. Learned Additional Standing Counsel further submitted that during investigation it came to light that the same Rs.10,19,100/- has been paid in four numbers of transactions to the Petitioner by the Informant. Although the details of such transactions have been given, this Court is of the view that the same is not very relevant for the purpose of consideration of bail application of the present Petitioner. However, the fact remains that the allegation is that a sum of Rs.10 lakh and odd was paid to the Petitioner through account transfer and allegedly a sum of



Rs.19 lakh was paid in cash and in proof of such cash payment, no documentary evidence is available on record apart from the two witnesses, who have stated that in the present case such money was paid. During his argument, learned Additional Standing Counsel further emphasised that further investigation is very essential to unearth various important aspects of the case relating to money trail, source of forgery and complexity of others, if any. For the aforesaid purpose, the custodial investigation may be required. He further expresses his apprehension that in the event the Petitioner is released on bail, there is every possibility that the Petitioner might fall away from the administration of justice system, as a result of which, the investigation of the case would be stalled and eventually the trial would be delayed. On such ground, learned Additional Standing Counsel submits that the prayer for bail of the Petitioner be rejected at this juncture.

18. Having heard the learned counsels appearing for the respective parties and on a careful examination of the case diary, the statement of the witnesses as well as the materials produced before this Court, this Court is of the considered view that so far the allegation made in the F.I.R. is concerned, the same pertains to a dispute between two individuals, i.e. the Informant and the Petitioner in the present case. The broad allegation as has been understood by this Court from a careful reading of the record is that the Informant had paid a sum of Rs.1 Crore to the Petitioner, out of which, a sum of Rs.10 lakhs was transferred to the account



of the Petitioner and the balance Rs.90 lakhs was paid in cash. The purpose of such payment of amount is to get certain works like getting approval in clearances from the Government agencies/authorities by the Petitioner by using his proximity and contact with some highly placed Government officials. This Court further observes that the Petitioner is in custody that since 06.01.2024, i.e. almost three months. In the meanwhile, the Petitioner must have been interrogated by the I.O. on several occasions. Moreover, it also appears that the allegation is by a specific individual alleging a specific sum of money paid to the Petitioner for a particular purpose. Therefore, there is no possibility of any enhancement of the cheated amount. It also appears that the Petitioner does not have any criminal antecedent. In view of the above consideration, this Court at this juncture restrains itself making any observation on the factual aspect of the case as the same would likely cause prejudice in the mind of the trial court while conducting the trial. However, taking into consideration the surrounding facts and circumstances, the gravity of allegation made in the F.I.R., the period of custodial detention as well as the fact that the Petitioner does not have any criminal antecedent, this Court is inclined to release the Petitioner on bail subject to certain stringent conditions.

19. Hence, it is directed that the Petitioner be released on bail in the aforesaid case on furnishing bail bond of Rs.1,00,000/- (Rupees one lakh) with two local solvent sureties each for the like amount to the satisfaction of the Court in seisin over the



matter. In addition to the above, the Petitioner shall also furnish a cash security of Rs.10,00,000/- (Rupees ten lakhs) before the Court in seisin over the matter, which shall be kept in any Nationalized bank in interest bearing account initially for a period of one year which will be renewable from time to time till conclusion of trial and the same shall be abide by the final outcome of the trial of the case. The release of the Petitioner shall also be subject to the following conditions:-

- I) he shall not indulge in similar criminal offences while on bail;
- II) he shall cooperate with the investigation and appear before the Investigating Officer as and when his presence is required by the Investigating Officer for the purpose of investigation;
- III) he shall appear before the trial court on each and every of posting of the case;
- IV) he shall not make any attempt to influence, threaten or gain over any of the prosecution witnesses and shall not tamper with the prosecution evidence while on bail;
- V) he shall not leave the jurisdiction of



the Court in seisin over the matter without specific permission of the Court in seisin over the matter.

VI) he shall surrender his travel documents like passport etc. before Court in seisin over the matter. In the event the Petitioner does not have any travel document, he shall file an affidavit before the Court in seisin over the matter.

Violation of any terms and conditions shall entail cancellation of bail.

20. With the aforesaid observations, directions and conditions, the bail application is allowed.

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

(Aditya Kumar Mohapatra)
Judge

Debasis