

Obinna Nicodemus Enweka Alias Obina ... vs State Of Orissa on 22 November, 2017

Author: S.K. Sahoo

Bench: S.K. Sahoo

IN THE HIGH COURT OF ORISSA, CUTTACK

BLAPL NO. 5963 of 2017

An application under section 439 of the Code of Criminal Procedure, 1973 in connection with CID C.B. Cyber Crime P.S. Case No.12 of 2016 corresponding to C.T. Case No.3811 of 2017 pending in the Court of learned S.D.J.M., Bhubaneswar.

Obinna Nicodemus Enweka
@ Obina Icodemus

-Versus-

State of Orissa

For Petitioner - Mr. Goutam Mishra

For Opp. party - Mr. Janmejaya Katiki
Addl. Govt. Advocate

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

.....
Date of Argument: 14.11.2017

.....
Date of order: 22.11.2017

S. K. SAHOO, J.

A twenty one year young boy has knocked at the portals of this Court for bail. He is involved in cybercrime. The manner in which the crime has been committed shows the devilish master mindedness, cool thinking, tricks adopted, organised effort and timely execution of plan of the

offenders. The intelligence and advanced type of knowledge on cyber seems to have been utilised in a wrong way. Sitting somewhere far from the victim and without having any direct physical access to her, the cybercriminal has caused unimaginable harm to her with touches of his fingers on the computer and stolen more than what an ordinary criminal could have done with gun. The victim of the organised crime appears to be an innocent lady fell into the trap of evil design. With the temptation of getting foreign gifts, she acted like a brainless toy in the hands of the criminals till she realised one day that she had been deceived on a mistaken impression.

The law was set into motion with the presentation of a first information report by Sukanti Mohanty at Cyber Crime Police Station of C.I.D., C.B., Cuttack on the accusation that she had become a victim of organized cybercrime and had paid a sum of Rs.17,03,390/- to different persons through their bank accounts which were provided to her through e-mail/sms /whatsapp. She alleged against one person identifying himself as Frank Young on facebook had sent her a friend's request which she accepted. The accused informed the informant that he had sent her some gifts which were held up in Delhi from where she should collect the gifts. The informant was asked through a number of calls and e-mails for money on various pretexts i.e. remittance, foreign exchange, transfer etc. The phone calls and sms were received from different numbers and the people who identified themselves as Frank, Marc, security personnel, R.B.I. officials and Airport officials etc. advised and convinced the informant to deposit money in different bank accounts provided by them. The money was paid in four different bank accounts of four different persons by the informant totalling to Rs.17,03,390/-.

On such first information report, C.I.D.C.B. Cyber Crime P.S. Case No.12 dated 26.08.2016 was registered under sections 419/420/468/471 of the Indian Penal Code and section 66-C/66-D of the Information Technology Act, 2000.

During course of investigation, the informant and other witnesses were examined. The documents relating to deposit of money, accounts statement of the informant's bank account as well as some other relevant documents were seized. Requisitions under section 91 of Cr.P.C. were sent to the concerned banks to provide A/c opening forms details along with up to date account statement and other necessary information for identification of the account holders. Immediate correspondence were also made with concerned mobile service providers to ascertain the subscriber information as well as call details to ascertain the identity and location of the cell phone numbers which were used in making contact with the informant. While conducting investigating at New Delhi, it was ascertained that large sum of money was deposited in the bank accounts of fraudsters and the same was immediately being transferred to many other bank accounts in smaller amounts by internet banking and soon after that the smaller amounts were withdrawn immediately through ATMs in no time leaving very little or no balance in the beneficiary accounts. The concerned branch managers were requested to debit freeze the beneficiary accounts. On 08.10.2016, the Inspector of Cyber Crime, Goa intimated the investigating officer by e-mail that two Nigerian nationals i.e. the petitioner and another have been arrested on 03.10.2016 by Goa police and during interrogation, it was ascertained that they are involved in a crime in Orissa by defrauding the informant by using two mobile numbers. During verification of the mobile numbers and call records received from the mobile service providers, it appeared that the two mobile numbers are common in Odisha Cyber Crime case and Goa Cyber Crime case. The investigating officer received CDR and CAF in respect of

some of the mobile numbers and analyzed them. From the CDR of the mobile phones, it became evident that the fraudster had induced the informant by making telephone call and sms and the two mobile numbers which were used in two IMEIs were seized by the Cybercrime officials of Delhi and Goa. It was ascertained during course of investigation that the petitioner and another co-accused had become friends with the informant through e-mail/sms/whatsapp. Finding sufficient *prima facie* evidence against the petitioner, charge sheet was submitted on 27.02.2017 against the petitioner and another co-accused under sections 419/420/468/471 of the Indian Penal Code and sections 66-C/66-D of the Information Technology Act keeping the further investigation open under section 173(8) of Cr.P.C.

The petitioner moved an application for bail before the learned Addl. Sessions Judge, Bhubaneswar in Bail Application No.201/904 of 2017 which was rejected vide order dated 02.08.2017.

Mr. Gautam Mishra, learned counsel appearing for the petitioner contended that the petitioner has been unnecessarily victimized and he is in no way involved in the alleged commission of the offences and he has already remained in custody for a substantial period and has undergone tremendous hardship and mental agony and charge sheet has already been submitted. It is further stated by the learned counsel for the petitioner that the petitioner has been granted bail in the Goa case by the J.M.F.C., Mapusa, Goa and he has filed the bail order copy. He further submitted that there is no chance of tampering with the evidence and therefore, the bail application may be favourably considered.

Mr. Janmejaya Katikia, learned Additional Government Advocate on the other hand contended that there is not only sufficient evidence against the petitioner relating to his involvement in the crime but also the further investigation of the case is under progress and once the petitioner is released on bail, there is likelihood of tampering with the evidence. It is further contended that the petitioner is involved in committing similar offences in other States also and therefore, the bail application should be rejected. Learned counsel filed the case records as well as some important documents in a sealed envelope.

Adverting to the contentions raised by the learned counsels for the respective parties and after going through the case records, it appears that there are sufficient *prima facie* evidence to show that due to inducement of the petitioner, the informant deposited a sum of Rs.17,03,390/- in four accounts, three belonged to S.B.I. and one belonged to Central Bank of India. From the said accounts, the petitioner had transferred money through online account transfer to beneficiary accounts and the accused persons have withdrawn money through ATM leaving a very negligible amount in the account. The maximum withdrawal have been effected using ATM cards and the Branch Managers of the concerned banks such as State Bank of Travancore, State Bank of Mysore, UCO Bank, Union Bank and State Bank of Hyderabad etc. stated that the account holders never visit the branch and have withdrawn money only through ATM. It is evident that the informant has deposited money in four accounts of different persons which are fake due to inducement by the petitioner through online transfer from her accounts and soon after her deposit, the money was transferred through internet banking in smaller amounts to several beneficiary accounts which are in different banks in New Delhi. It further appears that the petitioner visited India in a fake Visa on health ground.

Considering the nature and gravity of the accusation, the nature of supporting evidence, the manner in which the informant has been cheated with a huge amount, the severity of punishment in case of conviction, the reasonable apprehension of tampering with the evidence particularly when the further investigation is under progress and the criminal proclivity of the petitioner, I am not inclined to accept the prayer for bail of the petitioner.

Accordingly, the BLAPL application stands rejected.

..... S.K. Sahoo, J.

Orissa High Court, Cuttack The 22nd November, 2017/Sisir