

In the matter of an application under Section 439 of the Code of Criminal Procedure, 1973.

Tirupati Choudhury ... Petitioner

State of Orissa -Versus- Opp. party
...

For Petitioner : M/s J.Pal, B.K.Mishra,
A.K.Behera & S.K. Rout

For Opp. Party : Mr. V. Narasingh
(Addl. Govt. Advocate)

PRESENT:

THE HONOURABLE MR. JUSTICE B.N. MAHAPATRA
Date of Order : 30.07.2013

B.N.Mahapatra, J.

This bail application under Section 439 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') is presented by the accused-applicant Tirupati Choudhury.

2. The petitioner is alleged to have committed offence punishable under Sections 465/467/471/406/411/420/506/ 120-B/34 of the Indian Penal Code, 1860 (in short 'IPC') read with Section 4 of the Prevention of Money Laundering Act, 2002.

3. Facts leading to arrest of the petitioner having been elaborately dealt with in the earlier order dated 04.04.2013 passed in BLAPL No.1469/2013 when the order rejecting BLAPL was passed, there is no need to repeat the same in the present order.

4. The matter was before this Court in BLAPL No.1469 of 2013. By judgment dated 04.04.2013, the application for bail was rejected inter alia with following observations:

(i) Taking into account the nature and magnitude of the offence and its ramification as alleged, it cannot be said that it is a case of breach of contract simpliciter committed by the petitioners and the same would not constitute any offence under Sections 420 and 406, I.P.C. On the other hand, apparently a prima facie case is

made out which constitutes offence under Sections 420 & 406, IPC,

(ii) The plea of income tax paid for not transferring the lands to the applicants is not tenable in law,

(iii) The plea of the petitioners that there are some chaka lands which could not be converted to homestead and chaka lands cannot be fragmented into sub-plots for which lands could not be sold to investors who deposited money with petitioners for purchase of land pursuant to public advertisement floated by the petitioners itself prima facie shows the dishonest intention of the petitioners,

(iv) An undertaking before this Court after the petitioners being faced with criminal liability would not wash away the culpability of the petitioners and that cannot be a ground for grant of bail to the petitioners,

(v) As per petitioners' own admission, they are not in possession of genuine transferable/saleable homestead land in question to sell the same to informant and other investors in pursuance of their own promise,

(vi) Considering the nature of offence, its magnitude and ramification as alleged, materials available on record, the rival contentions of the parties and keeping in mind the principle of law laid down by the Hon'ble Supreme Court, the prayer for bail made by the petitioners was rejected.

5. Being aggrieved by the order of rejection dated 04.04.2013, the petitioner preferred SLP (Crl) No.3480 of 2013 before the Hon'ble Supreme Court and subsequently filed an application along with others seeking permission of the Hon'ble Supreme Court for withdrawal of the said SLP and by order dated 09.05.2013 the said petition was allowed giving liberty to the petitioner (s) if they/he so desire(s) to make an application for grant of bail before the Trial Court.

6. After submission of charge sheet, the petitioner filed an application for grant of bail before the learned S.D.J.M., Bhubaneswar, who rejected the bail application on the ground that the charge sheet already submitted does not dilute the gravity of the offence in any manner. The bail pleas of the accused persons have already been negated by this Court earlier. Considering all the materials, the bail petition was rejected. Thereafter, the petitioner moved the learned Sessions Judge, Khurda at Bhubaneswar and the case was transferred to 2nd Additional Sessions Judge, Bhubaneswar, who after taking into consideration the materials available, the gravity of the offence, the nature and character of the accused persons rejected the bail application. Hence, the present bail application has been filed before this Court.

7. After passing of the earlier order of this Court, charge sheet was submitted, a copy of which has been filed before this Court by the petitioner.

8. Mr. J. Pal, learned counsel appearing for the petitioner referring to the written note of submission dated 26.07.2013 submitted that the petitioner was arrested on 25.12.2012 and charge sheet in the said case was filed on 22.04.2013 before learned S.D.J.M., Bhubaneswar in G.R. Case No.4657 of 2012 under Sections 465, 467, 471, 406, 411, 420, 506, 120-B and 34, I.P.C. read with Section 4 of the Money Laundering Act. The Investigating Officer prayed for keeping the investigation open under Section 173(8) of the Cr.P.C. The learned S.D.J.M., Bhubaneswar by order dated 22.04.2013 did not take cognizance and instead directed the Investigating Officer to complete the investigation as soon as possible. Till date no further/additional charge sheet has been filed by the Investigating Agency though in the meantime three months have already passed.

9. Mr. Pal further submitted that after submission of charge sheet there is no necessity and/or justifiable reason for keeping the petitioner in jail custody. It is settled principles of law that the detention in jail custody pending trial is pre-trial detention and that is done only to facilitate the Investigating Agency to collect materials against the accused persons and if they are inside the custody then it will be easier for the Investigating Agency to collect the materials enabling them to file the charge sheet. Once the charge sheet is filed there is no necessity to keep the accused inside custody as the materials have been collected by the Investigating Agency. That is why the protection has been given to the accused who are inside custody and an outer limit has been prescribed under Section 167(2) of Cr.P.C. that if the Investigating Agency failed to file charge sheet within the outer limit prescribed under Section 167(2), Cr.P.C., then right accrues in favour of the accused and the Magistrate has no other option but to admit the accused on bail. In the present case admittedly the charge sheet has been filed and therefore, there is no necessity of keeping the accused behind the bar for indefinite period as it is matter of record that though the charge sheet has been filed since 22.04.2013 but till date no additional evidence or materials have been collected by the Investigating Agency. Therefore, it is a clear case of violation of Article 21 of the Constitution of India, 1950 (in short 'the Constitution').

10. It is further submitted that the settled principle of law is that till a person is convicted finally he is presumed to be innocent and his right to life and right to trade is not taken away on the basis of a mere allegation. Therefore, since the petitioner has remained in custody for more than seven months, there is no necessity of keeping him for further time inside custody as additional charge sheet as sought for, has not yet been filed and there is no chance of trial being concluded in near future. Therefore, no accused person can be detained for unlimited period which clearly violates Article 21 of the Constitution. Hence, it is a fit case that the accused persons should be enlarged on bail on such terms and conditions as this Court may deem just and proper.

11. Mr. Pal further submitted that the Hon'ble Supreme Court in a catena of decisions has held that detailed examination of evidence and elaborate examination of documents on merit should be avoided while passing orders on bail application. Placing reliance upon the decision of the Hon'ble Supreme Court in the case of State of Kerala vs. Raneef, AIR 2011 SC 340, Mr. Pal submitted that in deciding bail applications an important factor which should certainly be taken into consideration by the Court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, nobody can restore so many years of his life spent in custody. In that event, Article 21, which is the precious of all the fundamental rights of our Constitution, is

violated. This is certainly one of the important factors in deciding whether to grant bail. Power to grant bail is not to be exercised as if the punishment before trial is being imposed. The important material considerations in such a situation are whether the accused would be readily available for his trial, whether he is likely to abuse the discretion granted in his favour by tampering with evidence or there is any chance of threatening or tampering with the witnesses and there is chance of his absconding from justice.

12. Mr. Pal further submitted that if there is no prima facie case, there is no question of considering other circumstances but even where a prima facie case is established, the approach of the Court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with the evidence. In the present case, the accused is an established businessman of the State and there is no chance of his absconding and further he is ready and willing to file his undertaking before the Court that he will not tamper with the evidence, he will appear in the Court on each date fixed for trial till conclusion of trial subject to the provisions of Section 317 of Cr.P.C. along with any other conditions that would be imposed on him while enlarging on bail. This is a fit case where this Court can enlarge the petitioner on bail in any terms and conditions as would be deemed proper.

In support of his contentions, Mr. Pal relied upon the decisions of the Hon'ble Supreme Court in the cases of Dinesh Dalmia vs. CBI, AIR 2008 SC 78; Raneef, (supra); Bhagirathsinh Judeja vs. State of Gujarat, AIR 1984 SC 372; Niranjan Singh & another vs. Pravakar Rajaram Kharote & Others, AIR 1980 SC 785; Vaman Narain Ghiya vs. State of Rajasthan, 2009 AIR SCW 785; Gudikanti Narasimhulu & Others vs. Public Prosecutor, High Court, Andhra Pradesh, AIR 1978 SC 429; State of Gujarat Vs. Salimbhai Abdulgaffar Shaikh and others, (2003) 26 OCR (SC) 802; Deepak Shubhashchandra Mehta vs. CBI and Another, (2012) 51 OCR (SC) 751 and Sanjay Chandra vs. CBI, AIR 2012 SC 830 and decisions of this Court Smt. Sabita Sundari Sahu vs. State of Orissa, (2005) 31 OCR 640.

13. Mr. Pal further submitted that total collection from the land projects is Rs.80,94,82,102/- and not Rs.315,96,49,943/-.

14. Mr.V.Narsingh, learned Additional Government Advocate appearing for the State submits that taking into account the magnitude of offence and its ramifications, investigation was taken up in the right earnest. During the course of investigation, it came to the fore that the petitioner as the Director, and other petitioners as Managing Director and Director have duped thousands of innocent investors and committed fraud in an organized manner in making false promises and thereby induced people to part with their money which were subsequently misappropriated and converted to their own use.

15. It is further submitted that the present Bail Application relates to Kalyan Vihar Phase-II. During the course of investigation, it has come to light in the similar fashion that the petitioner along with others had floated four more projects, namely, (i) Bhagya Nagar , (ii) Kunja Vihar, (iii) Puspanjali Enclave and (iv) Kalyan Vihar and adopting similar modus operandi has cheated persons who made

investment in response to their advertisement. After investigation, charge sheet was filed and keeping in view the magnitude of the scam permission was sought to keep the investigation open. Learned S.D.J.M., Bhubaneswar has preferred to wait to take cognizance after gathering more evidence. He has not discharged the accused persons for want of evidence. Rather, considering the evidence available, he has rejected the bail application of the accused persons. Learned Additional Sessions Judge, Bhubaneswar while rejecting the bail application of the accused persons had also considered the materials available, gravity of the offence and the nature and character of the accused persons. This Court, considering the bail applications of the accused persons prior to submission of the charge sheet has rejected the bail petition observing that apparently prima facie case is made out which constitutes offence under Sections 420 and 406, IPC. Filing of charge sheet prima facie establishes the guilt of the accused persons. Taking of cognizance is inconsequential so far proviso to Section 167(2), Cr.P.C. is concerned. The evidence gathered so far clearly establishes that the accused persons had collected huge amount in Crores and on being asked did not furnish the details of utilization of the same. The learned S.D.J.M., Bhubaneswar has taken cognizance of the offence in EOW P.S. Case No.04 of 2013 corresponding to C.T. Case No.294 of 2013 of S.D.J.M., Bhubaneswar. Accused persons have falsely shown the amount of Rs.5.32 crores, which was given as advance for purchase of land and transaction of which is already over since long. Several other persons whose addresses have not been furnished are yet to be examined. Once the petitioner is enlarged on bail, it would not be possible to trace those persons for the obvious reasons they will be shielded by the petitioner.

16. Mr. Narsingh submitted that after filing of charge sheet, 34 complaints relating to the project in question have been received. In EOW PS Case No.11/12, the accused persons had threatened the complainant and other witnesses, which is clearly mentioned in the "Calendar of Evidence" submitted in the Court. Considering the money and muscle powers, it is firmly believed that the accused persons if released on bail would resort to their old ways of terrorizing the witnesses. Petitioner has also criminal antecedents. Those are Mancheswar PS Case No.33 dated 29.11.2010 under Sections 420/506/323/34, IPC. Similarly, Lalgach P.S. Case No.43 dated 16.03.2013 under Sections 447/468/471/ 420/34 I.P.C. has been registered against Madhusudan Panigrahi and others on the allegation that fraudulently a sale deed has been registered in respect of the land belonging to the informant in favour of M/s. Hi-tech Estates & Promoters Pvt. Ltd., represented by its Director Sri Madhusudan Panigrahi.

17. Mr.Narsingh further submitted that because of the means and the standing of the accused persons, their potentiality of interfering with the ongoing investigation need not be restated.

18. Placing reliance on the judgment of the Hon'ble Supreme Court in the Case of Prahalad Singh Bhatti Vs. NCT, (2001) 4 SCC 280, it is submitted that while granting bail what is to be considered is that there is reasonable grounds for believing that the offence has been committed. In the instant case, the test of reasonable ground for believing that the offence u/s.420, I.P.C. and allied offences have been committed is established beyond iota of doubt. Further, reliance is also placed on the judgment of the Hon'ble Supreme Court in the case of Mukesh Jain Vs. CBI, (2010) 88 AIC 319.

19. On the rival contentions of the parties, the questions that fall for consideration by this Court are :-

(a) Whether in the facts and circumstances after submission of charge sheet there is any necessity of detaining the petitioner in jail custody ?

(b) Whether in the facts and circumstances, the petitioner has made out a case for grant of regular bail to him?

20. Since both the questions are inter-linked, there are dealt with together.

21. I am conscious that detailed examination of evidence and elaborate examination of documents on the merit should be avoided while passing order on a bail application. In the present case, considering the nature of stand taken, the argument advanced by the petitioner and the reply of the State, I am constrained to deal with those in the interest of justice.

22. The main contention of the petitioner is that where no prima facie case is made out there is no question of considering other circumstances for grant of bail to an accused, but where prima facie case is established, the approach of the Court in the matter of bail is as to whether presence of accused persons is available for trial or it is likely to abuse discretion granted in his favour by tampering with evidence and/or influencing the witnesses. Since in the present case, the petitioner is an established businessman of the State, there is no chance of his absconding.

23. At this juncture, it is relevant to refer to the concluding paragraph of Charge sheet dated 22.04.2013, which reads as follows:-

"Under the facts and circumstances, a prima- facie case is well made out against the accused persons Sri Tirupati Panigrahi, Sri Tirupati Choudhury, Sri Madhu Sudan Panigrahi, M/s. Hi-Tech Estate & Promoters (P) Ltd. and M/s. Rajdhani Systems & Estates Pvt. Ltd.

represented by their MD Sri Tirupati Panigrahi u/s 465/ 467/ 471/ 406/ 411/ 420/ 506/120(B)/34 IPC/4 of the Prevention of Money Laundering Act 2002. The stipulated custodial period of 120 days is going to be completed by 23.04.2013 in respect of aforementioned accused persons. Hence, I submitted Charge Sheet vide No.01 dt.

22.04.2013 U/S 465/ 467/ 471/ 406/ 411/420/506/120(B)/34 IPC/4 of the Prevention of Money Laundering Act 2002. keeping investigation open u/s-173(8) Cr.P.C. since, the retrieval of data by CFSL Kolkata is still awaiting, the money trail of the accused persons are to be made in detail, many more investors are to be examined, the complicity of other accused persons are to be verified, the details of scrutiny of bank documents are to be made, other persons are to be examined in respect of sold and purchased of land by the accused persons for Kalyan Vihar

Phase-II and for tracing the amount misappropriated by the accused persons."

Thus, the Investigating Officer categorically reported that a prima facie case is well made out against the accused persons Sri Tirupati Panigrahi, Sri Tirupati Choudhury and Sri Madhusudan Panigrahi, Managing Directors of Hi-Tech Estate & Promoters (P) Ltd. and M/s. Rajdhani Systems & Estates Pvt. Ltd., represented through their Managing Director, Sri Tirupati Panigrahi under Sections 465/467/471/406/411/420/506/120- B/34, IPC read with Section 4 of the Prevention of Money Laundering Act, 2002.

24. This Court while rejecting bail petition filed earlier before submission of charge sheet has observed that apparently a prima facie case is made out which constitutes the offence under Sections 420/406, IPC. Now on perusal of the charge sheet, the materials support the earlier views, as sufficient and concrete materials highlighting and establishing the role of the accused persons have been collected and referred to therein. There is no change in the circumstances from what existed earlier when the first order rejecting the bail application was passed.

25. Now, the question arises as to whether the petitioner is to be admitted to bail despite a prima facie case is made out against him for commission of alleged offence. For the reasons stated hereinafter this Court is of the view that the petitioner is not entitled to be enlarged on bail.

(i) As per the allegation of the prosecution, the accused persons have collected Rs.315.96 crores (according to the petitioner, it is Rs.80,94,82,102/-) from the innocent and gullible investors and the available balance in freezed 185 accounts is only Rs.4.14 crores and the rest amount is to be traced. The accused persons had withdrawn Rs.101 crores from 20 accounts of the two Companies and in spite of notice no details of utilization of such withdrawal have been furnished. During the course of investigation, it came to fore that the petitioner who is the Director and other accused persons who are Managing Director and Directors have duped thousands of investors and committed fraud in an organized manner and derived huge wrongful gain and in the process they caused immense wrongful financial loss to the innocent investors. While floating the alleged plotting schemes, the Company in the name and style of Hi-tech Estates and Promoters Pvt. Ltd. and M/s Rajadhani Systems and Estates Private Limited through public advertisements floated the plotting Scheme with a dishonest intention, making false promises and thereby induced people to part with their money which were subsequently misappropriated and converted to their own use.

(ii) Further stand of the State is that in EOW Bhubaneswar P.S. Case No.02/13 the accused had threatened the complainant and other witnesses when they insisted for sale of land in their favour as per agreement. In respect of its contention the State has filed statements of some of the investors recorded under Section 161 Cr.P.C. One of such investors, namely, Shri Lokanath Dash, S/o. Late Jagannath Dash in his statement recorded on 23.12.2012 under Section 161 Cr.P.C. has stated that when he met the accused persons and asked them to sell the plot to him as per the agreement,

the petitioner and other accused persons threatened to kill him and forced him to take back his money. Similarly, one Ajaya Kumar Nayak, S/o. Damburudhar Nayak in his statement recorded on 23.12.2012 has stated that the petitioner has not sold the land to him as per the agreement though he time and again has gone to the office of the petitioner situated at Saheed Nagar, Bhubaneswar and met the Managing Director and other staff and requested them to sell the land as per the agreement. Taking different pleas they did not register the land but told him that the land is chakka land which has not yet been converted. Thereafter, he met and told to the Managing Director, Dr. Tirupati Panigrahi, Directors Mr. Tirupati Choudhury and Madhusudan Panigrahi that why they have taken money from him to sell the chakka land. Hearing this, the aforesaid persons got angry and asked him to leave that place and threatened that if he would speak more, they will take his life. The statement of one Mantu Das, S/o. Nikhil Chandra Das recorded on 23.12.2012 under Section 161 Cr.P.C. reveals that several times he and his brother visited the head office of Hi-Tech and met Dr. Tirupati Panigrahi, Sri Tirupati Choudhury and Sri Madhusudan Panigrahi as well as other staff of the company and apprised them to give the plot as he and his brother have already paid the total instalments.

On every occasion he was assured to be given possession of the plot. On one occasion, when he met Dr. Tirupati Panigrahi and his employees and asked as to why they are not giving him the plot when the instalments have already been paid as per the agreement, they said there are some difficulties in conversion of the chakka land and therefore, this was not possible to register the plot in their favour. When he said why did they collect money when the plot is non-convertible, they threatened him with dire consequences.

Another investor namely, Bibhuti Bhusan Mohapatra, S/o. Kailash Chandra Mohapatra has also stated in his statement recorded under Section 161 Cr.P.C. that after payment of the total instalments the company did not transfer the land in his favour though he has visited several times to the head office of Hi-Tech and met the petitioner and other accused persons. It has been further stated that he has also been threatened with dire consequence if he insists for the land.

Another person namely, Sri Jayanta Kumar Panda, S/ o. Late Arjuna Kumar Panda in his statement recorded under Section 161 Cr.P.C. has stated that after paying the full amount, he had gone to the office of the Hi-Tech at Saheed Nagar, Bhubaneswar several times and met Tirupati Panigrahi, Tirupati Choudhury and Madhusudan Panigrahi and requested them to register the land in his name. They took the plea that the Income Tax people had taken away all the original land documents in the year 2005 for which they are unable to register the land in his name. They had started taking money from him from 13.03.2006 i.e. after Income Tax raid for selling the plot and at the time of receiving money they had not intimated him about any income tax problem. The aforementioned persons were not listening to his request and they were threatening him with dire consequence if he again comes to their office for the above purpose.

One Malaya Kumar Mishra, S/o. Sarat Kumar Mishra in his statement has stated that after payment of the total instalments the company did not register the land in his favour though he has gone to

their Saheed Nagar Office several times. He met Tirupati Choudhury, Tirupati Panigrahi and Madhusudan Panigrahi so also other employees of the company and requested them to register the plot in his favour, since he had already paid the total instalments. On every occasion they returned him in empty hands on different pleas and assured him to give the plot shortly. Once, he met Tirupati Panigrahi and asked as to why they are not giving him plots when he has already paid the total instalments as per the agreement. Hearing this it was replied that since there is some difficulties in conversion of the chakka land it is not possible to register the plot in his favour. When he told why they have taken money when the plot is non-convertible, he was threatened with dire consequences.

(iii) One Lokanath Das in his FIR has stated that when he asked the petitioner and others to register the sale deed in his favour as per the agreement, they threatened him to take back the money.

(iv) Calendar of Evidence submitted by Mr. Narsingh shows that a number of persons have been interrogated and several documents have been examined by the Investigating Agency, who/which will be produced at the time of trial.

(v) In course of hearing, Mr. Narsingh brought to the notice of this Court that there are criminal antecedents of the accused persons. P.S. Case No.33 dated 29.01.2010 under Sections 506, 323 and 34 I.P.C. was registered against Tirupati Panigrahi and other accused persons on the report of one Sri Ankur Tyagi of Kolkata, who is a student of Hi-tech Medical College and Hospital. The accused was on anticipatory bail and the case is under investigation. A copy of the FIR is filed before this Court. Similarly, another P.S. Case No.43 dated 16.03.2013 under Sections 447, 468, 471, 420/34 I.P.C. has been registered against Madhusudan Panigrahi and others on the allegation that fraudulently a sale deed has been registered in respect of the land belonging to the informant at D.S.R., Cuttack on 26.04.2010 in favour of M/s Hi-tech Estates and Promoters Pvt. Ltd., Sahid Nagar, Bhubaneswar represented by its Director, Sri Madhusudan Panigrahi, the petitioner.

(vi) Further case of the prosecution is that after submission of charge sheet, they have received several complaints which are to be investigated. The money trail of the accused persons are to be made in detail; many more investors are to be examined; the complexity of other accused persons are to be verified; many other persons are to be examined and amount misappropriated by the accused persons is to be traced.

(vii) The petitioner in its written submission has stated that the petitioner and other accused persons are established businessmen of the State. The apprehension of the prosecution is that considering the money and muscle power, it is firmly believed that the accused persons if released on bail would resort to their old ways of terrorizing the witnesses. Therefore, if the accused persons are released on bail, possibility of influencing the witnesses cannot be ruled out. At this stage, the stand of the State cannot be lightly brushed aside. At the time of trial, this aspect can be appropriately dealt with.

26. At this juncture, it is beneficial to refer to some of the decisions of the Hon'ble Supreme Court.

In the case of State of Gujarat v. Mohanlal Jitamalji Porwal and another, (1987) 2 SCC 364, the Hon'ble Supreme Court held as under:

"The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest."

27. In Prahalad Singh Bhati (supra), the Hon'ble Supreme Court held as under:

"8..... While granting the 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, behaviour, means and standing 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 or the State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words 'reasonable ground for believing' instead of 'the evidence' which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

28. The Hon'ble Supreme Court in the case of Dipak Shubhashchandra Mehta (supra) held as under:

"32. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted, particularly, where the accused is charged of having committed a serious offence. The court granting bail has to consider, among other circumstances, the factors such as (a) the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence; (b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and

(c) prima facie satisfaction of the court in support of the charge. In addition to the same, the court while considering a petition for grant of bail in a non-bailable

offence, apart from the seriousness of the offence, likelihood of the accused fleeing from justice and tampering with the prosecution witnesses, have to be noted."

29. The Hon'ble Supreme Court in the case of Y.S.Jagmohan Reddy Vs. Central Bureau of Investigation, AIR 2013 SC 1933 held as under:-

"13. Learned senior counsel appearing for the appellant pointed out that after the order dated 05.10.2012, the CBI is not justified in prolonging the same just to continue the custody of the appellant. It was also highlighted that even according to the CBI, several Ministers and IAS officers are involved, but no one has been arrested so far. As far as those allegations are concerned, it is the claim of the CBI that considering the huge magnitude of transactions, various beneficiaries, companies/persons involved with A-1 and his associates, the CBI is taking effective steps for early completion of the same. Though learned senior counsel for the appellant submitted that in view of non-compliance of Section 167 of the Code the appellant is entitled to statutory bail, in view of enormous materials placed in respect of distinct entities, various transactions etc. and in the light of the permission granted by this Court in the order dated 05.10.2012, we are unable to accept the argument of learned senior counsel for the appellant.

14. On going into all the details furnished by the CBI in the form of Status Report and the counter affidavit dated 06.05.2013 sworn by the Deputy Inspector General of Police and Chief Investigating Officer, Hyderabad, without expressing any opinion on the merits, we feel that at this stage, the release of the appellant (A-

1) would hamper the investigation as it may influence the witnesses and tamper with the material evidence. Though it is pointed out by learned senior counsel for the appellant that since the appellant is in no way connected with the persons in power, we are of the view that the apprehension raised by the CBI cannot be lightly ignored considering the claim that the appellant is the ultimate beneficiary and the prime conspirator in huge monetary transactions.

15. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs 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.

16. 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.

17. Taking note of all these facts and the huge magnitude of the case and also the request of the CBI asking for further time for completion of the investigation in filing the charge sheet(s), without expressing any opinion on the merits, we are of the opinion that the release of the appellant at this stage may hamper the investigation. However, we direct the CBI to complete the investigation and file the charge sheet(s) within a period of 4 months from today. Thereafter, as observed in the earlier order dated 05.10.2012, the appellant is free to renew his prayer for bail before the trial Court and if any such petition is filed, the trial Court is free to consider the prayer for bail independently on its own merits without being influenced by dismissal of the present appeal.

18. With the above observation, the appeal is dismissed."

30. In my considered view, after filing of charge sheet, there is no mitigating factor so far as the petitioner is concerned. On the other hand, more aggravating circumstances have surfaced.

Considering the nature of offence, its magnitude and ramification as alleged, materials available on record, the rival contentions of the parties and keeping in mind the principle of law laid down by the Hon'ble Supreme Court, I am not inclined to accept the prayer for bail to the petitioner. It is, however, made clear that the observations made above are in the context of prayer for bail and shall not be treated to be conclusive and determinative for the purpose of trial, if any.

31. There is no quarrel over the decisions of the Hon'ble Supreme Court relied upon by Mr. Pal, learned counsel for the petitioner. They are mostly based on the concept of Article 21 of the Constitution and broad principles as to where bail can be granted. For the reasons stated in the preceding paragraphs, they are of no assistance to the petitioner.

32. Accordingly, the bail application is rejected.

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B.N.Mahapatra, J. Orissa High Court, Cuttack Dated 30th July, 2013/ss/skj/ssd