

Orissa High Court

Ashwini Kumar Patra vs Republic Of India on 26 April, 2021

IN THE HIGH COURT OF ORISSA, CUTTACK

BLAPL No.215 of 2021

In the matter of an application under section 439 of the Code of Criminal Procedure in connection with R.C. Case No.08(A) of 2019 pending in the Court of Special Judge, CBI, Court No.I, Bhubaneswar.

Ashwini Kumar Patra

....

Petitioner

Mr. Devashis Panda, Advocate

-versus-

Republic of India

....

Opposite Party

Mr. Sarthak Nayak,
Special Public Prosecutor (CBI)

CORAM: JUSTICE

S.K. SAHOO

Date of Hearing : 23.04.2021

Date of Judgment: 26.04.2021

S.K. SAHOO, J.

The petitioner

Ashwini

Kumar

Patra

has

filed

this

application under section 439 of Cr.P.C. for grant of bail in connection with R.C. Case No.08(A) of 2019 pending in the Court of learned Special Judge, CBI, Court No.I, Bhubaneswar in which charge sheet has been submitted under sections 409, 420 and 471 read with section 120-B of the Indian Penal Code and section 13(2) read with section 13(1)(D) of the Prevention of Corruption Act, 1988 (as amended in 2018).

// 2 // The petitioner moved an application for bail in the Court of learned Special Judge, CBI, Court No.I, Bhubaneswar, which was rejected vide order dated 07.01.2021 mainly on the ground that prima facie the petitioner appears not only to have processed the housing loans in question but also submitted invalid/ false post- sanction inspection reports in the Bank and that if the petitioner is enlarged on bail, there would be every chance of his influencing the prosecution witnesses and tampering with the prosecution evidence.

2. The factual matrix of the case, in hand, is that the one Roop Lal Meena, Deputy General Manager, Regional Office, Union Bank of India, Bhubaneswar lodged a written complaint before the

Superintendent of Police, CBI, ACB, Bhubaneswar on 01.07.2019 stating therein that the accused bank officials of Union Bank of India, Nayapalli Branch, Bhubaneswar (hereinafter 'the Bank') namely, Shri Bhubaneswar Mohapatra, the then Chief Manager, Shri Ashwini Kumar Patra, the then Marketing Officer (the petitioner herein) and Shri Rajesh Kumar Patanga, the then Manager (Advances) entered into a criminal conspiracy with one private builder, ten borrowers of Housing Loan and some unknown bank officials in the year 2017 and by abusing their respective official positions, housing loans were sanctioned in favour of the borrowers on the basis of false/ fictitious documents/ information including fake/ fictitious ITRs/ defective KYC // 3 // documents/ information and without verifying the documents by violating the guidelines of the bank. It is also alleged that the petitioner along with other accused Bank officials without obtaining approved plan/ legal scrutiny/ search report etc. released the entire loan amounts in favour of the accused builders on behalf of the borrowers without ensuring completion of construction of the house (simplex/ duplex houses at Mouza-Pubasasan, Gudiapokhari, P.S.- Pipili, Dist.-Puri, Odisha). It is also alleged that the disbursed loan amounts were allegedly diverted by the accused builders for other purposes and such act on the part of the petitioner along with others have caused undue wrongful loss to the tune of RS.5,00,20,019.74 paisa as on 31.05.2019 to the Bank and corresponding wrongful gain to themselves. The Superintendent of Police, CBI, ACB, Bhubaneswar on receipt of the written complaint and on prima facie finding that the complaint disclosed commission of cognizable offence punishable under sections 120-B, 420, 467, 468 and 471 of the Indian Penal Code and section 13(2) read with section 13(1)(D) of the Prevention of Corruption Act, 1988 (as amended in 2018) registered the same as R.C. No. 08(A)/2019-BBS (RC0152019A0008) dated 01.07.2019 and on getting prior approval from the competent authority of the Bank as per section 17-A of the Prevention of Corruption Act, 1988 (as amended in 2018) for initiating CBI investigation against the bank officials into the alleged matter, proceeded with the investigation. In course of investigation, the investigating officer recorded the // 4 // statements of the witnesses, seized the incriminating documents and arrested the petitioner along with others and submitted charge sheet against the petitioner for commission of offences under sections 409, 420 and 471 read with section 120-B of the Indian Penal Code and section 13(2) read with section 13(1) (d) of the Prevention of Corruption Act, 1988 (as amended in 2018).

3. Mr. Devashis Panda, learned counsel appearing for the petitioner contended that the petitioner is in judicial custody since 31.12.2020 and he being the then Assistant Marketing Manager of the Bank has never misused the public money in any manner as he was assigned with the duty of collecting files from the field and providing it to the Manager, Advance and the Chief Manager for scrutiny and sanction of the loan. He further submitted that the petitioner brought the file of the GDS builder and submitted it to the Manager, Advance of the Bank for scrutiny and placed it before the appropriate authority for disbursement of the loan amounts. It is contended that the loan disbursement file after being processed by the Bank was placed before the Chief Manager of the Bank, who then after verifying the entire documents and after thorough perusal of the files, sanctioned the loan amount and the petitioner is in no way connected with any conspiracy and he has never caused wrongful loss to the Bank. With regard to the allegation that the petitioner dishonestly accepted false documents, information including fake Income Tax returns, defective KYC without verification and in violation of the Bank guidelines, // 5 // learned counsel contended that the petitioner's job in the capacity of Assistant Marketing Manager was not to verify the documents provided by the builders rather it was

the duty of the Manager, Advance and Chief Manager of the Bank to scrutinize such documents and to obtain prior approval of plan before disbursing the loan amounts. He placed reliance on the letter of the Bank dated 3rd December 2011, which indicates the role and responsibilities of the Marketing Manager. It is further argued that the CBI officials without arresting the other two Bank officials intentionally, arrested the petitioner illegally even though specific allegations have been leveled by the complainant against the aforesaid two bank officials, namely, Bhubaneswar Mohapatra, the then Chief Manager and Rajesh Kumar Patanga, the then Manager, Advance, who were actually involved in causing wrongful loss to the Bank.

Learned counsel for the petitioner further contended that the incident relates to the year 2017 when the petitioner was Assistant Manager (Marketing) and the allegation that the petitioner conspired with the then Chief Manager (Advances) of the Bank, builder Uma Shankar Patro, one other private builder and ten borrowers of housing loans and misappropriated Rs. RS.5,00,20,019.74 paisa and that all the loans were processed, recommended and inspected by the petitioner is not at all correct. He further submitted that out of thirty charge sheet witnesses, who are officials of the Bank, I.T.Os, Insurance officials, GEQD and CBI I.O., // 6 // only one private charge sheet witness i.e. C.S.W. NO.22, namely, Aswin Kumar Patro, is related to the co-accused Uma Shankar Patro who is to prove that all borrowers are either workers/ known persons/ relatives of the workers in GDS Builders Pvt. Ltd. or Dwaraka Jewellers in which the builder co-accused is a partner. It is further submitted that since investigation has been completed and the petitioner is a local man and he has been dismissed from the services of the Bank, there is no chance of his absconding or tampering with the evidence, therefore, the bail application may be sympathetically considered.

4. Mr. Sarthak Nayak, learned Special Public Prosecutor, CBI on the other hand filed his written note of argument along with copy of chargesheet and vehemently opposed the prayer for bail and argued that the petitioner had sourced, processed and recommended the housing loan accounts in the names of ten borrowers on the basis of fake documents being in conspiracy with other co-accused persons. The petitioner initiated the disbursement of the loan amounts from the respective housing loan accounts of the accused borrowers to the bank accounts of the accused builders without obtaining the consent of the borrowers and flouting the bank norms prescribed in respect of disbursement of the loans. It is further contended that the petitioner had made recommendations for the sanction of the loans, mentioning the false net-worth of the accused borrowers without obtaining supporting documents of assets and liabilities, misleading the // 7 // sanctioning authority for which the Bank suffered a loss to the tune of RS.4,09,58,401.74 paisa (excluding applicable interest). Learned counsel further submitted that the petitioner submitted post-sanction inspection reports of the properties financed by the Bank in the alleged ten housing loan proposals, wherein it was reported that the building construction was completed and finishing work was going on, but the investigation revealed that the findings reported in the inspection reports are all false, as only partial constructions i.e. around 50 to 60 approximately (as per the empanelled Valuer of Bank) and much work was pending at the construction site on date. Learned counsel further submitted that the Bank initiated disciplinary action against the petitioner and dismissed him from services of the Bank on finding his complicity and involvement in the alleged act of conspiracy. It is further submitted that though as per the Bank's circular instructions, it is mandatory to forward all the loans involving the mortgage of the property to a Centralized

Processing Centre, which is functioning in the premises of the Regional Office of the Bank, but the petitioner processed the loans and recommended for sanction, which was ultimately sanctioned and disbursed directly in the branch, thereby entering into a criminal conspiracy. It is contended that the Bank's Master Circular of Home Loans reveals that all the documents submitted by the borrowers need to be scrutinized, verified and checked for their genuineness by the officers of the Bank, who will collect and process the loan proposals but in the case in // 8 // hand, all the loan proposals were processed by the petitioner himself in his user name through the Bank's loan processing software and thus, it is obvious that he should collect all the required documents, check for their genuineness either directly or logically as per the Bank's circular before making recommendation for sanction. It is further contended that the petitioner has not even obtained any such documentary proofs towards the assets and liabilities of the borrowers but had mentioned false or fictitious statements while processing the credit information and net-worth assessment of the borrowers in the loan proposals, which clearly reflects his malafide intention of concealing the facts and deviating the procedures of the Bank. Learned counsel for the CBI further urged that the quantum of misappropriation amount being very high and the petitioner being a local person, he is very likely to influence and gain over the witnesses in case he is enlarged on bail and therefore, the bail application should be rejected.

5. The chargesheet of the case reveals that out of ten alleged housing loans, the Bank has disbursed the loan amounts related to purchase of lands of five housing loan amounts (in the names of different borrowers) by way of demand drafts favouring Smt. Gita Rani Das, who is the land/ plot owner in those five cases. It was further revealed that an amount of RS.32,72,000/- has been disbursed by the Bank to Smt. Gita Rani Das by way of demand drafts towards the land registered by her in the names of five accused // 9 // borrowers. Further, the Bank disbursed the loan amounts with respect to the remaining five alleged housing loan accounts (in the names of different borrowers) to the Bank account of accused Uma Sankar Patro, who himself is the builder as well as the land/ plot owner in those five cases. The investigation further revealed that an amount of Rs.4,38,00,900/- has been credited in the account of accused Uma Sankar Patro maintained with Federal Bank and the Bank in question (C.C. account) on different dates from 13.11.2017 to 23.02.2018. During the course of investigation, the Bank has carried out fresh valuation of the mortgaged properties during March 2020 and the total value of the said mortgaged properties was evaluated by the empanelled valuer of the Bank at RS.2,74,92,480/-, which is much lower than the total dues outstanding in the alleged loan accounts. The investigation further revealed that in spite of being aware of the Bank's circular, the loans were processed, recommended, sanctioned and disbursed directly in the Branch by the petitioner and others by entering into a criminal conspiracy in the loan accounts of the borrowers was disbursed by the Bank to the bank account of the GDS Builders Pvt. Ltd. through transfer mode. The investigation further revealed that Sri Bhubaneswar Mohapatra, the then Chief Manager of the Bank had full knowledge of all the disbursements made in the alleged housing loan accounts of the accused borrowers to the bank accounts of the accused builders/ sellers as he along with the petitioner had signed/ initialed the respective disbursement vouchers // 10 // and the initials of Sri Bhubaneswar Mohapatra and the petitioner have been duly identified by the other bank officials, who are acquainted with the same and are chargesheet witnesses in the case. The investigation further revealed that no consent of the borrowers was obtained before debiting from their loan account and all the seven housing loan proposals were

processed by the petitioner being the Asst. Manager (Marketing) of the Bank and Sri Bhubaneswar Mohapatra, the then Chief Manager had sanctioned the loan in the capacity of Branch Manager basing on the recommendations of the petitioner. In the chargesheet, it is mentioned that the Bank suffered a total wrongful loss of RS.4,09,58,401.74 paisa excluding applicable interest in such act of conspiracy and cheating with a corresponding wrongful gain to the accused persons. So far as the accusation against the petitioner is concerned, in the chargesheet, it has been summarized as under:

(a) Non-observance of due-diligence:

The petitioner has not observed due diligence (mandated by the circular instruction of the Bank) in respect of margin money, KYC, occupation, net worth of the borrower (assets and liabilities with supporting documents etc.), property being purchased as well as income source of the borrower. The petitioner has not obtained any such document to show the payment of the margin money by the borrower. The bank account statements of the borrowers at no point of time has an amount more than RS.10,000/- (rupees ten thousand) // 11 // which shows that they could not afford for such high amount payments.

(b) Preparation of inspection reports without actually conducting the inspection:

The petitioner has not followed the guidelines of the Bank while conducting the inspections. The pre-sanction inspection reports are prepared sitting at the branch itself (as admitted by the processing officer during investigation) without actually conducting the inspection. Further, the details of occupation and net worth of the borrowers, mentioned in the inspection reports are found false. The statements mentioned in the post-sanction inspection reports are also found false, as no such building/ structures are found at the site on date.

(c) Non-forwarding of the loan proposals to ULP and sanction at the branch itself:

As per the circular instructions of the Bank issued during 2015, the petitioner should forward the loan proposals involving mortgage of property to a special designated loan processing centre Union Loan Point (ULP) and should not sanction at the branch without specific permission of the Regional Head. The petitioner has sanctioned all the loans at the branch itself, ignoring the instructions of the Bank as specific permission of the Regional Head to sanction the loans is not held on record. Further, the ULP is functioning in the premises adjacent to the branch in the same compound. The branch has to conduct due diligence part and submit all the relevant documents to ULP for necessary processing and sanction of the loans. This shows the willful ignorance towards the guidelines of the Bank and involvement of the petitioner in // 12 // the criminal conspiracy with the builders and others.

(d) Disbursement of the loans without ensuring the progress of the constructions:

The petitioner has not ensured the progress of the constructions and authorized for disbursement of the loan amounts violating the Bank's instructions in respect of the disbursement of the loans.

Further, no such documents like consent of the borrower, request of the builder are held on record. All the post-sanction reports are found false. The processing officer has mentioned in the post-sanction reports that a two storied building/ structure is completed in the project site and finishing work is going on, but actually no such structures are found at the site as on date and the statements mentioned in the inspection reports are all false. The petitioner in spite of ensuring the correctness of the reports and progress of the work, has authorized for disbursal of the loans. The petitioner has also ignored to apply his mind while disbursing the loans because logically it is not possible to complete the construction within a period of three to eight weeks. But the loans are all disbursed within a period of three or eight weeks from the date of sanction.

(e) Processing of loans based on false income and net worth of the borrowers:

The circular instructions of the Bank mandates the branch officers/ officials to ensure the genuineness of the income and net worth of the borrowers by supporting documents like Bank statements, salary slips (in case of the salaried), income computations, balance sheets, profit and loss statements (in case of self-employed/ business persons), documents related to the assets and liabilities // 13 // and credit information bureau reports etc. The petitioner has not obtained any such documents from the borrowers in the instant case and relied upon the data submitted by the borrowers during the processing stage, which is otherwise in violation of the laid down norms.

6. The accusation against the petitioner relates to commission of economic offences which are considered to be grave offences and are to be viewed seriously. Such offences affect the economy of the country as a whole and it involves deep-rooted conspiracy and huge loss of public fund. It is committed with cool calculation and deliberate design solely with an eye on personal profit regardless of the consequence to the community. 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:- Y.S. Jagan Mohan Reddy -Vrs.- C.B.I. reported in (2013) 7 Supreme Court Cases 439, State of Gujarat -Vrs.- MohanLal Jitamalji Porwal reported in (1987) 2 Supreme Court Cases 364).

In the case of Y.S. Jagan Mohan Reddy (supra), it is held as follows:-

"34. Economic offences constitute a class apart and need to be visited with a different approach in the // 14 // matter of bail. The economic offence having deep- rooted conspiracies and involving huge loss of public funds need 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.

35. 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 public/State and other similar considerations."

In case of MohanLal Jitamalji Porwal (supra), it is held as follows:-

"5. 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 colour crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest".

7. Law is well settled that detailed examination of evidence and elaborate discussion on merits of the case need not be undertaken for grant of bail. The Court has to indicate in the bail order, reasons for prima facie conclusion why bail was being granted, // 15 // particularly, when the accused is charged of having committed a serious offence.

In the case of Kalyan Chandra Sarkar -Vrs.- Rajesh Ranjan alias Pappu Yadav reported in 2004 Supreme Court Cases (Criminal) 1977, it is held as follows:

"11. 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 merit 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. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the Court to consider among other circumstances, the following factors also before granting bail:

(a) The nature of accusation and the 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.

(c) Prima facie satisfaction of the Court in support of the charge."

In the case of Ram Govind Upadhyay -Vrs.- Sudarshan Singh reported in 2002 Supreme Court Cases (Criminal) 688, it is held as follows:-

"3. Grant of bail though being a discretionary order but, however, calls for exercise of such discretion in a // 16 // judicious manner and not as a matter of course. Order of bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is depended upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail. More heinous is the crime, the greater is the chance of rejection of the bail, though, however, depended on the factual matrix of the matter."

In the case of Prahalad Singh Bhati -Vrs.- NCT, Delhi reported in 2001 Supreme Court Cases (Criminal) 674, it is held as follows:-

"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 state and similar other considerations".

In the case of Sanjay Chandra -Vrs.- CBI reported in A.I.R. 2012 S.C. 830, it is held as follows:-

"25. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the // 17 // punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration. The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required".

8. Adverting carefully to the tactical and enthralling contentions raised at the Bar by the learned counsel for the respective parties and looking at the oral as well as documentary evidence available on record, I find that there is no dispute to the fact that the petitioner was working as Assistant Manager (Marketing) of the Bank at the relevant point of time. The accusation against him is very serious, as it prima facie appears that he has not observed due diligence as mandated by the circular

instructions of the Bank in respect of margin money, KYC, occupation, the genuineness of the // 18 // income and net worth of the borrowers i.e. assets and liabilities with supporting documents etc., status of their properties as well as income source of the borrowers. He has not ensured the progress of the constructions and authorized for disbursement of the loan amounts violating the Bank's instructions in respect of the disbursement of the loans. He appears to have submitted pre-sanction inspection reports without actually conducting the inspection and stated that construction of the site has been completed even though no such construction was undertaken. Further, the details of the occupation and net worth of the borrowers mentioned in the inspection reports are found to be false. He has sanctioned the loans ignoring the instructions of the Bank without specific permission of the Regional Head in that respect. He has relied upon the data submitted by the borrowers during the processing stage, which was in violation of the norms of the Bank. The loans were disbursed within a period of three or eight weeks from the date of sanction. The willful ignorance towards the guidelines of the Bank prima facie indicates the criminal conspiracy of the petitioner with the builders and others. The Bank suffered a total wrongful loss of Rs.4,09,58,401.74 paisa (rupees four crores nine lakhs fifty eight thousand four hundred one and seventy four paisa) excluding applicable interest as per the chargesheet. The contentions raised by the learned counsel for the petitioner for grant of bail to the petitioner are not at all convincing, rather I find sufficient force in the argument of the learned counsel for CBI.

// 19 // In view of the foregoing discussions, it appears that the crime was committed in a cool, calculated and organized manner causing wrongful loss of crores to the Bank. There are prima facie materials showing involvement of the petitioner in the deep-rooted conspiracy with other co-accused persons to cause such a huge loss to the Bank. In my humble opinion, granting bail to the petitioner in economic offences of this nature would be against the larger interest of public and State as it involves criminal misappropriation and cheating of huge amount of public money and there is also reasonable apprehension of tampering with the witnesses.

Accordingly, the bail application sans merit and hence stands rejected.

Before parting, I would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for bail made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the trial Court at the appropriate stage of the trial.

As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a // 20 // printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No. 4587 dated 25TH March 2020 as modified by Court's Notice No. 4798 dated 15TH April 2021.

.....

S.K. Sahoo Judge Orissa High Court, Cuttack The 26TH April 2021/PKSAHOO