

(2021) 02 OHC CK 0001

In the Orissa High Court

Case No : Bail Application No. 2315 Of 2020

Ambika Prasad Mohanty

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 01-02-2021

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 406, 420, 467, 468, 471

Code Of Criminal Procedure, 1973 — Section 173(8), 439

Odisha Protection Of Interests Of Depositors (In Financial Establishments) Act, 2011 — Section 6

Citation : (2021) 02 OHC CK 0001

Hon'ble Judges : S. K. Sahoo, J

Bench : Single Bench

Advocate : U.C. Mishra, Ashutosh Mishra, J.K. Mohapatra, Bibekananda Bhuyan, J.P. Patra

Final Decision : Dismissed

Judgement

S. K. Sahoo, J.

1. The petitioner Ambika Prasad Mohanty has filed this application under section 439 of Code of Criminal Procedure seeking for bail in connection

with E.O.W., Bhubaneswar P.S. Case No.09 of 2019 corresponding to C.T. Case No.03 of 2019 pending on the file of Presiding Officer, Designated

Court, O.P.I.D. Act, Cuttack for offences punishable under sections 467, 468, 471, 420, 406, 120-B of the Indian Penal Code read with section 6 of

the Odisha Protection of Interests of Depositors (in Financial Establishments) Act, 2011 (hereafter "O.P.I.D. Act").

2. The prosecution case, as per the first information report lodged by one Sri Ratikanta Samal is that one Prafulla Kumar Sarangi, S/o. Bidyadhar

Sarangi of Vill.-Baghathenga, P.O.-Taladanda, P.S.-Kujanga, Dist.-Jagatsinghpur,

at present Plot No.LB-239, Bhimtangi, P.S.-Airfield, Bhubaneswar

being an employee of Andhra Bank formed a Co-operative Society in the year 1995 namely Andhra Bank Employees Housing Co-operative

Society vide Certificate of Registration No.33 dt.26.10.1995 in the office of Registrar of Co-operative Societies, Orissa with a view to provide

housing plots to the employees of Andhra Bank at Bhubaneswar. He was the Secretary of the Society. In the year 2009, Sri Sarangi launched a

plotting scheme in the name of Hindustan Valley at Madanpur, P.S.-Chandka, Bhubaneswar in Madanpur Mouza within an area of five acres.

Sri Sarangi promised many of the bank employees and other known persons to have a litigation free residential plot in the project. In order to attract

the customers, he constructed temporary approach road and installed some electric poles inside the project area. Initially, the land cost was Rs.120/- to

Rs.145/-per sq.ft. which was enhanced up to Rs.225/- per sq.ft. Being attracted by this project, many of the bank employees, doctors and other

renowned persons comprising of one hundred sixty persons booked plots in this project for their residential houses and to construct a good society in a

compact area. The informant also booked a plot in this project and invested his hard earned money to have a litigation free residential plot. All the

investors booked plots through payments by cheques and bank drafts to Andhra Bank Employees Housing Co-operative Society of which Sri Sarangi

was the Secretary and handling the account single handedly maintained at Andhra Bank, Chandrasekharapur Branch, Bhubaneswar. After receiving

the considerable amount of around Rs.7.00 crores from different investors, Sri Sarangi engaged one Bhubaneswar based builder namely Hindustan

Builder represented by its Managing Director Manoj Kumar Mohapatra, S/o.-Muralidhar Mohapatra of Nuapatana near Durga Mandap, Cuttack and

the petitioner who was the Director to provide five acres of land in Madanpur mouza of the project. In this connection, one memorandum of

understanding was signed by Hindustan Developers represented by its Managing Director Manoj Kumar Mohapatra and the petitioner as Director and

Andhra Bank Employees Housing Co-operative Society represented by its Secretary Prafulla Kumar Sarangi on 03.04.2009 to provide five acres of

land and to develop the project. As such both Manoj Kumar Mohapatra and the petitioner of Hindustan Developers executed sale deeds in the name

of the customers of the project on the direction of Sri Sarangi during the year 2009 to 2011. Out of one hundred sixty investors, the names of forty five investors could be ascertained who were their group members. Despite their persistent demands made since 2011 to Sri Prafulla Kumar Sarangi, Manoj Kumar Mohapatra and the petitioner to deliver the actual physical possession of the plots/lands, they failed to deliver the same. Though eight years passed in the meantime, neither Prafulla Kumar Sarangi nor the petitioner and Manoj Kumar Mohapatra did take any initiative to give possession of the plots to the customers. On the contrary, they avoided the customers continuously with different pleas for which the project area was lying unutilized without any development. The accused persons removed the electric poles which were installed by them during site visit of the customers. Finding no way out, the customers approached Sri Sarangi to refund the invested amount but he deliberately avoided to refund their hard earned money with different pleas. It is further stated in the F.I.R. that the accused persons without having perfect right, title and interest over the land sold away the same to many of the depositors fraudulently and they in connivance with each other collected huge amount from many persons by executing false deeds with dishonest intention to cheat the investors and accordingly cheated them and misappropriated their hard earned money to the tune of Rs.7.00 crores. It is further stated that Andhra Bank Employees Housing Co-operative Society and others by preparing forged documents have cheated the general public for their personal gain.

3. During course of investigation, it was ascertained that Andhra Bank Employees Housing Co-operative Society was registered at the office of Registrar Co-operative Society, Orissa vide Registration No.33 dt.26.10.1995 having its office at M-14, Baramunda, Bhubaneswar. Subsequently, it was shifted to Pokhariput, Bhubaneswar in the year 2014 and this office was closed. Sri Prafulla Kumar Sarangi was the Secretary of the said Co-operative Society. In the year 2009, Sri Sarangi launched a plotting scheme in the name of Hindustan Valley at Madanpur, Bhubaneswar in Madanpur mouza within an area of five acres. Sri Sarangi insisted many bank officials and other known persons to have a litigation free residential developed plots with approach road to this project. In order to attract the customers, he had constructed temporary approach road and installed some electric

poles inside the project area. Initially, the land cost was Rs.120/- to Rs.145/- per sq.ft. which was enhanced up to Rs.225/- per sq.ft. Being attracted to this project, many of the bank employees, doctors and other renowned persons comprising of one hundred sixty persons booked plots in the project for their residential house and to construct a good society in a compact area. Being induced by Sri Prafulla Kumar Sarangi, the informant also booked a plot in this project and invested his hard earned money to have a litigation free residential plot in the Project. All the investors booked plots through payments by cheques and bank drafts to Andhra Bank Employees Housing Co-operative Society of which Sri Sarangi was the Secretary and handling the account maintained at Andhra Bank, Chandrasekharpur Branch, Bhubaneswar. After receiving the considerable amount of around Rs.7.00 crores from different investors, Sri Sarangi engaged one Bhubaneswar based builder namely Hindustan Builder represented by its Managing Director Manoj Kumar Mohapatra, S/o.-Muralidhar Mohapatra of Nuapatana near Durga Mandap, Cuttack and the petitioner as Director to provide five acres of land in Madanpur mouza of the project. In this connection, one Memorandum of Understanding was signed by Hindustan Developers represented by its M.D Manoj Kumar Mohapatra, the petitioner as Director and Andhra Bank Employees Housing Co-operative Society represented by its Secretary Prafulla Kumar Sarangi on 03.04.2009 to provide five acres of land and to develop the project. As such, both Manoj Kumar Mohapatra and the petitioner of Hindustan Developers have executed sale deeds in the name of the customers of the project on the direction of Sri Sarangi during the year 2009 to 2013. Despite their persistent demands made since 2011 to Sri Prafulla Kumar Sarangi, the petitioner and Manoj Kumar Mohapatra to deliver the actual possession of the plots/lands, they failed to deliver the same. Though ten years in the meantime elapsed, neither Manoj Mohapatra nor the petitioner and Prafulla Kumar Sarangi did take any step to give possession of the developed plots to the customer. On the contrary, they avoided them continuously with different pleas. The project area was lying unused without any development. The accused persons also removed the electric poles which were installed by them during site visit of the customers. Finding no other way, the customers approached Sri Sarangi to refund the invested amount but he deliberately avoided to refund the money taking different pleas. It was found during investigation that the accused persons

without having any perfect right, title and interest over the land, sold away the same to many of the customers fraudulently. The accused persons in connivance with each other collected huge amount of money from many persons by executing false deeds with dishonest intention to cheat the investors and accordingly they cheated them and misappropriated their hard earned money to the tune of Rs.7.00 crores. Thus, Andhra Bank Employees Housing Co-operative Society and others by preparing forged documents cheated the general public for their personal gain. Though the registration of the plot was made in the year 2009 but the society failed to give possession of the purchased plot. The petitioner and the co-accused persons falsely told the customers to have right and title of entire Hindustan Valley Project but, in fact, they had not purchased genuine plots on which they could construct approach road to sold out plots. They had got prior knowledge that they were not having right and title over the area but all the same, with an intention to deceive the customers, they had received the payment. Though, the accused persons registered the land but it is not fulfilling any of the purpose of the informant and others to have a plot in nearby of Bhubaneswar. As such they deceived the informant and other investors with an amount of more than Rs.7.00 crores on the basis of fabricated documents. In spite of repeated approach of the customers to the accused persons, they did not construct any boundary wall around the plot as promised though they had taken money since last ten years. In some cases, registration was made of plot to which there was no approach road and in some cases, registration had not at all been made though payment was received and in some cases, excess lands were sold in a plot to many persons creating problem in mutation of land. After misappropriating the deposits, the accused persons absconded by closing their office. During course of investigation, the investors were examined, the investment documents such as money receipts, deposits slips, sale deeds and other relevant documents were seized. Many incriminating documents were also seized from the accused Prafulla Kumar Sarangi. On scrutiny of bank account statement in favour of Andhra Bank Employees Housing Co-operative Society, it was ascertained that cash of Rs.10,23,73,127.50 has been entered in the account bearing A/c. no.128710100000450 w.e.f. 01.01.2009 to 04.06.2019 and cash of Rs.5,20,66,000/- has been withdrawn in the

name of M/s. Hindustan Developers w.e.f. 30.04.2009 to 17.03.2012 by Andhra Bank Employees Housing Co-operative Society.

4. The petitioner was arrested in connection with the case on 26.06.2019 and forwarded to Court on the same day. Charge sheet was submitted on

21.10.2019 under sections 467, 468, 471, 420, 406 read with section 120-B of the Indian Penal Code and section 6 of the O.P.I.D. Act keeping the

investigation open under section 173(8) of Cr.P.C. The petitioner moved an application for bail before the Court of learned Presiding Officer,

Designated Court, O.P.I.D. Act, Cuttack which was rejected on 02.03.2020.

5. Mr. U.C. Mishra, learned counsel appearing for the petitioner strenuously contended that the petitioner is in judicial custody since 26.06.2019 and as

per the prosecution case, the misappropriation amount was received by the Secretary of Andhra Bank Employeesâ?? Housing Co-operative Society

in the society account and the role of the petitioner as the Director of M/s. Hindustan Developers is very limited as on the request of the Secretary of

the Andhra Bank Employeesâ?? Housing Co-operative Society, he provided the land and accordingly, sale deeds were executed between the vendor

and the vendee and the petitioner has taken his commission. He further contended that the petitioner has not directly collected any money from the

investors and there was no transaction between the petitioner with the customers in his personal capacity. He further contended that the ingredients of

the offences are not attracted against the petitioner and the petitioner has not cheated any customers at any point of time and there is no criminal

antecedents against the petitioner and the petitioner is a permanent resident of Basudev Nagar under Mancheswar police station, Bhubaneswar where

he is residing with his family and he has also got substantial landed properties and therefore, there is no chance of absconding. He further contended

that in view of the period of detention of the petitioner in judicial custody, the bail application may be favourably considered.

Learned counsel for the State, on the other hand, opposed the prayer for bail and submitted that co-accused Prafulla Kumar Sarangi, an employee of

Andhra Bank formed a Co-operative Society in the year 1995 namely Andhra Bank Employeesâ?? Housing Co-operative Society which was

registered and he floated a plotting scheme in the name of Hindustan Valley to give the employees of the Andhra Bank and other known persons to

have a litigation free residential plots in the project and in that process, he collected rupees seven crores from different investors and engaged one

Bhubaneswar based builder namely M/s. Hindustan Developers in which the petitioner was the Director to provide five acres of land in Madanpur

mouza and one Memorandum of Understanding was also signed. The petitioner and the Managing Director Manoj Kumar Mohapatra executed the

sale deeds in the name of the customers but the possession of those land were never given to the customers. He further submitted that in connivance

of the petitioner with the other co-accused persons, huge amount was collected by executing fake sale deeds to cheat the investors and accordingly,

the accused persons misappropriated hard earned money of the customers to the tune of rupees seven crores. He further submitted that even though

the accused persons were having prior knowledge that they had no right, title and interest over the land but all the same, with an intention to deceive

the customers, they registered the land in the year 2009 and no boundary wall was constructed around the plot and in some cases, there was no

approach road to the plots and the accused persons absconded after misappropriating the deposited amount by closing their offices. It is further argued

that from out of rupees ten crores and odd amount available in the account of Andhra Bank Employeesâ?? Housing Co-operative Society, cash of

rupees five crores and odd was withdrawn in the name of M/s. Hindustan Developers. He further submitted that the petitioner being an influential

person of the locality, he is very likely to tamper with further investigation of the case which is under progress and therefore, the bail application of the

petitioner should be rejected.

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 use to have deep-rooted conspiracy and it involves 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) 55 Orissa Criminal Reports (SC) 825, State of Gujarat -Vrs.-

Mohan Lal Jitmalji Porwal reported in A.I.R. 1987 S.C. 1321 and Nimmagadda Prasad -Vrs.- C.B.I. reported in (2013) 7 Supreme Court Cases 466).

In case of Kalyan Chandra Sarkar (supra), it is held that the mere fact that the accused has undergone a long period of incarceration by itself would

not entitle him to be enlarged on bail. In case of Rajesh Ranjan Yadav -Vrs.- C.B.I. reported in (2007) 36 Orissa Criminal Reports (SC) 183, it is held

that it is true that Article 21 of the Constitution of India is of great importance because it enshrines the fundamental right to individual liberty, but at the

same time a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute and reasonable

restrictions can be placed on them. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he

has been in jail for a long time, the Court has also to take into consideration other facts and circumstances, such as the interest of the society. In case

of Ash Mohammad -Vrs.- Shiv Raj Singh reported in (2012) 9 Supreme Court Cases 446, it is held as follows:-

â??17. We are absolutely conscious that liberty of a person should not be lightly dealt with, for deprivation of liberty of a person has immense impact on the mind of

a person. Incarceration creates a concavity in the personality of an individual. Sometimes it causes a sense of vacuum. Needless to emphasize, the sacrosanctity of

liberty is paramount in a civilized society. However, in a democratic body polity which is wedded to Rule of Law an individual is expected to grow within the social

restrictions sanctioned by law. The individual liberty is restricted by larger social interest and its deprivation must have due sanction of law. In an orderly society an

individual is expected to live with dignity having respect for law and also giving due respect to others' rights. It is a well accepted principle that the concept of liberty

is not in the realm of absolutism but is a restricted one. The cry of the collective for justice, its desire for peace and harmony and its necessity for security cannot be

life and this kind of offences usher in an impediment in establishment of orderly society,

the duty of the Court becomes more pronounced and the burden is heavy. There should have been proper analysis of the criminal antecedents. Needless to say,

imposition of conditions is subsequent to the order admitting an accused to bail. The question should be posed whether the accused deserves to be enlarged on bail

or not and only thereafter issue of imposing conditions would arise. We do not deny for a moment that period of custody is a relevant factor but simultaneously the

totality of circumstances and the criminal antecedents are also to be weighed. They are to be weighed in the scale of collective cry and desire. The societal concern

has to be kept in view in juxtaposition of individual liberty. Regard being had to the said parameter, we are inclined to think that the social concern in the case at hand

deserves to be given priority over lifting the restriction of liberty of the accused.â??

7. Adverting to the contentions raised by the learned counsel for the respective parties and after carefully going through the materials available on

record, it appears that the petitioner has played a very vital role in misappropriation of huge amount of money which was collected from the employees

of Andhra Bank and other persons to provide them litigation free residential plots. The vendors were having no right, title and interest over most of the

plots for which sale deeds were executed in favour of the customers and fake and fabricated documents were prepared to cheat the customers. In the

charge sheet, it is indicated as to how the vendors were not in physical possession of the plots which were sold to the vendee. The further

investigation of the case is under progress to find out the involvement of other persons/members of the said co-operative Society. As appears from the

charge sheet, many more witnesses/investors are yet to be examined and the certified copies of sale deeds as per requisition from Tahasil/DSR office

are to be collected, movable and immovable properties in favour of co-accused Prafulla Kumar Sarangi, Andhra Bank Employeesâ?? Co-operative

Society, M/s. Hindustan Developers and its Managing Director Sri Manoj Mohapatra and that of the petitioner as well as its associates are to be

traced. It further appears that the bank account statements in respect of the accused persons/ co-operative society and partnership firm are to be scrutinized to ascertain the money trail.

Without detailed examination of evidence on record and elaborate discussions on merits of the case, but considering the nature and gravity of the

accusation, the nature of supporting evidence, availability of prima facie case against the petitioner, the severity of punishment in case of conviction

and since huge amount of public money has been misappropriated and the investors have been duped of their hard earned money to the tune of rupees

seven crores in a preplanned manner without being provided with litigation free residential plots and when further investigation of the case is under

progress and taking into account the reasonable apprehension of the petitioner in tampering with the evidence and above all in the larger interest of

society, I am not inclined to release the petitioner on bail.

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