

(2022) 10 OHC CK 0082
In the Orissa High Court
Case No : Bail Application No.5260 Of 2022

Gagan Bihari Behera And Another

APPELLANT

Vs

Republic of India (C.B.I.)

RESPONDENT

Date of Decision : 19-10-2022

Acts Referred:

Indian Penal Code, 1860 — Section 409, 420, 468, 471

Prize Chits and Money Circulation Schemes (Banning) Act, 1978 — Section 3, 4, 6

Citation : (2022) 10 OHC CK 0082

Hon'ble Judges : B. P. Routray, J

Bench : Single Bench

Advocate : D.Saranghi, S.Nayak

Final Decision : Disposed Of

Judgement

B.P. Routray, J

1. The Petitioners, namely, Gagan Bihari Behera and Subash Mahanta have prayed to release them on bail in connection with S.P.E.No.33 of 2014 corresponding to R.C.No.38/S/2014-Ko1 pending in the Court of the learned Special C.J.M.(C.B.I.), Bhubaneswar for alleged commission of offence under Sections 420/409/468/471 of the I.P.C. and Sections 3, 4 & 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978

2. It is submitted on behalf of the Petitioners that they are inside custody since 11th June, 2019 and in the meantime, only two witnesses have been examined in course of trial. It is further submitted that the prayer of the Petitioners for bail was earlier rejected in BLAPL No.6191 of 2019 and BLAPL No.5929 of 2020 by order dated 3rd March, 2020 and 8th October, 2021 respectively. The prayer for bail was rejected mainly considering the nature of acquisition and their previous conduct. It is further submitted that so far as the previous conduct of the Petitioners is concerned, their transactions relate to the year 2012 at Rairangpur in respect of the same company. The transactions in the present case are also

concerning the same year of 2012 at Bhanjanagar and therefore, it is not the case that the Petitioners repeated their conduct subsequently either after conviction or by mis-utilizing the liberty granted in bail in one case. Learned counsel for the Petitioners continues to submit that the allegations at Rairangpur in the earlier case and at Bhanjanagar in the present case are though part of one transaction, but two different cases have been instituted against them.

It is further submitted that two co-accused persons, namely, Pranab Kaniti Ghosal and Rajib Singh Sahas Ray have already been released on bail in the meantime by this Court in different bail applications.

3. Learned counsel for the C.B.I. submits on the other hand that, the Petitioners being found involved in offences for cheating the public in general by collecting money from them with false assurance by repayment with hither interest, they are not entitled to be released on bail. He further submits that due to strike of Covid Pandemic, the trial was delayed and as such, no benefit can be extended to the Petitioners for the same.

4. It is seen that the allegations against the Petitioners are to the effect that, they along with other accused persons misappropriated the amount collected from general public through the company, namely, M/s. Zodiac Foundation. The CBI upon completion of investigation submitted charge-sheet on 30th June, 2015 against the Petitioners and one Dandapani Sethi. Subsequently, supplementary charge-sheet was submitted on 13th October, 2016 adding other accused persons.

5. Perusal of the copy of the supplementary charge-sheet does not reveal any further material brought against the Petitioners beyond the materials stated in the charge-sheet dated 30 th June, 2015. As per the charge-sheet, one Dandapani Sethi was the principal accused, who run the company in the name of M/s. Zodiac Foundation. The present Petitioners along with said Dandapani Sethi collected money from general public of Bhanjanagar area with false assurance of return of higher amount. As mentioned in the charge-sheet, they collected money to the tune of Rs.68,21,260/- from 925 members and advanced Rs.54,72,250/- as loan to 280 members and returned the amount at Rs.1,27,400/-. As per the statements made in the charge-sheet, the Petitioners have misappropriated an amount of Rs.12,21,610/-against the total deposited amount of Rs.68,21,260/- and they further collected Rs.39,43,700/- from 411 depositors and misappropriated the entire amount.

6. The Petitioners have been convicted for the similar nature of offences by the Chief Judicial Magistrate, Mayurbhanj, Baripada in G.R.Case No.298 of 2013 (C.T.No.1409/2013) arising out of Rairangpur Town P.S.Case No.58, dtd.26.5.2013.

7. Perusal of the copy of the judgment of the learned C.J.M., Baripada dated 1st December, 2014 reveals that the Petitioners adopted the same modus operandi at Rairangpur during the year 2012 as they adopted at Bhanjanagar in the

present case in respect of the same company, i.e. M/s. Zodiac Foundation. The learned C.J.M., Baripada while convicting the Petitioners sentenced them to undergo R.I. for four years and it reveals from the copy of the judgment that they were sent to custody on the same date of pronouncement of judgment.

8. In the present case, the Petitioners are in custody since 11th June, 2019 being surrendered in Court. So it is probable that, though they were in custody since 1st December, 2014 in connection with the other case, but were not taken on remand in the present case.

9. Further, copies of the depositions produced in course of hearing reveal that, P.W.1 and P.W.2 both have been examined on 26th July, 2022. These two witnesses seem to be two depositors, who have deposited their money in M/s. Zodiac Foundation. But both of them did not say the name of the Petitioners while they named the principal accused Mr.Dandapani Sethi. As per the submission, no further witnesses have been examined thereafter.

10. Considering the period of detention of the Petitioners inside custody, which is more than three years by now in respect of the present case, I am inclined to release them on bail. Also, they being found permanent residents under Bhanjanagar P.S. in the district of Ganjam and Betanati P.S. in the district of Mayurbhanj respectively, there is very less chance of their absconding from the court of law.

11. Accordingly, it is directed to release the Petitioners on bail in the aforesaid case for Rs.50,000/-(fifty thousand) with two sureties each for the like amount to the satisfaction of the learned court below in seisin over the matter with further condition that one of such sureties shall be their relatives and that, the Petitioners shall furnish property security of rupees six lakhs each free from all encumbrances and legal impediment and that, they shall not dissuade any witness directly or indirectly by way of inducement, threat or promise acquainted with the facts of the case from disclosing such facts before the court or tamper with the evidence, and they shall attend the trial court on each date fixed.

12. The BLAPL is disposed of.

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