(2023) 05 OHC CK 0280

In the Orissa High Court

Case No : Bail Application No. 2509 Of 2023

Lakshman Srinivasan	APPELLANT
Vs	
Republic Of India (C.B.I.)	RESPONDENT

Date of Decision : 19-05-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 41(A), 173(8), 439
Indian Penal Code, 1860 — Section 34, 120B, 409, 411, 414, 420, 471
Companies Act, 1956 — Section 67(3)
Prize Chits and Money Circulation Scheme (Banning) Act, 1978 — Section 4, 5, 6

Citation : (2023) 05 OHC CK 0280

Hon'ble Judges : G. Satapathy, J

Bench : Single Bench

Advocate : M.Kanungo, S.Nayak

Final Decision : Disposed Of

Judgement

G. Satapathy, J.

1. This is an application U/S. 439 of Cr.P.C. by the Petitioner for grant of bail in connection with FIR No. RC. 30/S/2014-Kol. corresponding to T.R. Case No. 03 of 2023 pending in the Court of learned Special Judge (CBI) Court No.I-cum-Additional Sessions Judge, Bhubaneswar for commission of offence punishable U/Ss. 409/411/414/420/471/120-B/34 of IPC read with Sections 4, 5 & 6 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 (in short, "the Act").

2. The allegations against the petitioner arise out of an FIR lodged by one Ashok Kumar Panda (ASI of Police) in Baliapal FIR No. 82 dated 14.05.2013 for commission of offence punishable U/Ss.420/120-B/34 of IPC read with Sections 4, 5 & 6 of the Act stating therein that one company namely, Infinity Realcon Limited (in short, 'IRL') is not being listed with Reserve Bank of India as a Non-Banking Financial Company having its registered office at 176, A.J.C.Road, 4th Floor Kolkata was engaged in collecting public deposits throughout Orissa by

accepting fixed deposits and other deposits in the shape of RD scheme (APS) by alluring depositors with promise of high rate of interest and the company was run by Board of Directors. Mr.Pranab Mukherjee as CMD, Mrs. Sarbari Mukherjee, Mr.Prabir Mukherjee and Mr.Soumen Mallick as Directors and Mr.Ganesh Kar Branch Manager of Baliapal Branch and the company was giving 5.3% to 15.80% of the deposit as a commission to its agents which was economically not feasible and it was paying to the old depositors from the money collected from the new depositors and thereby, cheating the general public and the Board of Directors of the Company were actively involved in such cheating. On the basis of this FIR, the investigation ensued, but subsequently in obedience to the direction of the Apex Court passed in Writ Petition (Civil) No. 401 of 2013 and Writ Petition (Civil) No. 413 of 2013, C.B.I. took up the case by registering it as RC No. 30/S/2014-Kol. Accordingly, on 31.12.2016, CBI filed first charge sheet against Pranab Mukherjee, CMD and Prabir Kumar Mukherjee and Soumen Mallick, both Directors and the accused company namely, M/s. IRL for offence U/Ss. 120-B read with 409/420 of IPC and Sections 4, 5 & 6 of the Act, but kept the investigation open U/s. 173(8) of Cr.P.C. considering the larger criminal conspiracy and monetary trail of regulatory authorities and others. In the course of investigation, it was also alleged that accused company M/s. IRL raised funds from the public under FD, RD, MIS etc. in the garb of secured debentures, preference shares and towards product advance and it was found from Form-2 (Return of Allotment) filed by the accused company showing issue of preference shares of Rs.19,81,55,380/- and number of persons/allottee to be 25,326 which is above 49, but as per Section 67(3) of Companies Act, 1956 since offer was to more than 49 persons, the provision of public issue would have applied and thereby, the company was alleged for illegal money collection business. Since there was public outcry with respect to illegal activities of chit fund companies, the accused company by end of year 2012 tried to change its face and got two Multi State Credit Co-operative Societies formed in the name of M/S. Golden Multi State Credit Co-operative Society (in short, M/S. Golden Society) and M/S. Pride Multi State Credit Co-operative Society (in short, M/S. Pride Society) with the help of highly qualified professionals such as petitioner and another and it was found in investigation that the petitioner was the founder Chairman of M/S. Golden Society which was registered with Central Registrar of Co-operative Societies and got the permission to operate in four states namely, Assam, Bihar, Jharkhand and West Bengal and initially 213 persons were shown to be the members of the society and the petitioner also associated his family members in the affairs of the society. The petitioner also handed over the management to the CMD and others of M/S. IRL on papers by electing them as new members and Directors of the society and subsequently, the CMD M/s. IRL increased the area of operation from four to twelve states. Since M/s. IRL could not do any business in the name of M/s. Golden Society, it again formed a new society in the name of M/s. Pride Society through the petitioner and got permission to operate in sixteen states throughout the country including the State of Orissa and accordingly, the agreed amount of Rs.4.15 crores was paid to the petitioner and his companies in later stage in between September, 2012 to July, 2013, out of which, the petitioner received Rs.3 crores in his personal account and M/s. Pride Society collected near about 8.74 crores approximately from 40 branches of different States. Finding the involvement of the petitioner in this way, the CBI arrested the petitioner on 26.09.2022 and later on produced before the Court. Accordingly, a supplementary charge sheet was filed against the petitioner for offence U/Ss. 411/414/471/120-B read with Section 420/409 of IPC and 4, 5 & 6 of the Act. The petitioner, however, has unsuccessfully moved an application for bail before the learned Special Judge, C.B.I., Bhubaneswar on 20.02.2023.

3. In the course of haring of bail application, Mr.Milan Kanungo, learned Senior Counsel appearing for the petitioner has submitted that the petitioner is a law abiding citizen and he has cooperated the entire investigation, but all of a sudden without explaining any grounds, the CBI arrested the petitioner on 26. 09.2022 and three others and produced them before the learned C.J.M. (CBI), Bhubaneswar by taking transit remand from A.C.J.M., Bidhannagar Kolkota. It is further submitted that in the meanwhile after completion of investigation on 21.01.2023, the CBI submitted charge sheet against the petitioner, but his application for bail was rejected by the learned Special Judge, C.B.I., Bhubaneswar without any justification, since no case U/Ss. 409/411/414 of IPC is made out against the petitioner. It is further submitted that the petitioner was neither the Director nor an employee of the company and he is no way connected with the day-today operation of business of accused company M/S. IRL and the petitioner even was also not named in the FIR. It is also submitted that Section 409 of IPC has been incorporated against the petitioner only to prevent him from taking benefit of notice U/S. 41(A) of the Cr.P.C. On the above grounds, learned Senior Counsel prays to grant bail to the petitioner.

4. In seriously opposing the bail application of the petitioner Mr.S.Nayak, learned counsel for Republic of India (CBI) has submitted that in the course of investigation, the role played by the petitioner as the erstwhile Director M/S. Finshore management Services Limited and M/S. Biomax Traders Private Limited discloses hatching of criminal conspiracy with the directors of accused company M/S IRL and others consciously for misappropriating ill-gotten funds of such company. It is also submitted by Mr. Nayak that the petitioner connived with the office bearers of accused company M/S. IRL to form M/S. Pride Society and M/s. Golden Society with a motive to directly aid and abet as well as assists M/S. IRL and its Directors to continue in their illegal deposit collection business and the petitioner, thereby, received pecuniary gains for himself and his companies & trusts for a total amount of Rs.5,12,85,000/-. It is also submitted that FIR is not an encyclopedia of entire events containing the names of all the accused persons at the inception, but when in the course of investigation the complicity of a person is found, he can undoubtedly be charge sheeted for the commission of offence and here in this case although the name of petitioner does not figure out in the FIR at the time of its lodging, but subsequently the complicity of the petitioner having been found, he has been rightly charge sheeted in consonance

with law. It is further advanced that in obedience to the kind direction of the Apex Court, the CBI took up investigation in this case and on finding prima facie materials against the petitioner for offences punishable with life imprisonment, there is no requirement to let off the petitioner with prior notice U/S. 41(A) of Cr.P.C. While summing up his argument, Mr.Nayak has submitted that the petitioner has one criminal antecedent of similar nature in CBI Case No. 115 of 2017 which is pending in the file of learned Metropolitan Magistrate, 21st Court, Calcutta for committing forgery and cheating one branch of State Bank of India located at Calcutta and the petitioner is a part of the financial fraud committed by M/S. IRL to the tune of Rs.342 crores by illegally operating investment schemes in the name of accused company and the petitioner, therefore, should not be granted bail.

5. After having considered the rival submissions upon perusal of record, there appears allegation against the petitioner for committing economic offence, besides being allegedly associated with accused company M/S. IRL, which company was allegedly engaged in collection of funds from innocent depositors in the guise of floating different schemes and it is alleged that a sum of Rs. 4.15 Crores was paid to the petitioner in the year 2012 and 2013 by the accused company M/S. IRL. In the matter of grant or refusal of bail to accused persons involved in economic offences, the Court has to keep in mind, inter alia, the larger interest of public and State. The nature and seriousness of economic offence and its impact on society are always important consideration. Law is well settled that while considering the bail application in such cases of economic offences, factors like (i) nature of accusations, (ii) enormity of punishment that entail in conviction of the case, (iii) material evidence in support of the charge, (iv) criminal antecedent if any, (v)reasonable apprehension of accused tampering with witnesses or absconding and (vi) reasonable possibility of securing the presence of accused in the course of trial are required to be considered.

6. Further, while considering the bail application, the Court is also required to see whether there is any prima facie case or reasonable ground appears against the accused and the likelihood of the offence being repeated by him. In this case, the petitioner never disputes pendency of another case against him for similar type of offence in the State West Bengal, which is brought to the notice of this Court by an affidavit sworn in by the wife of the petitioner. It is, however, true that the petitioner had left out to mention the pendency of another criminal case against him in the bail application, but subsequently took a plea that non-disclosure of criminal antecedent was due to inadvertence as stated in the affidavit of his wife, who is a charge sheet witness in this case and thereby, a reasonable apprehension evokes in the mind of the Court about capacity of the petitioner to tamper prosecution material. In both the case, the petitioner has been alleged for committing cheating and forgery involving crores of rupees. Besides, while considering the bail application of an accused for commission of economic offence, one of the dominant consideration is to prevent repetition of such offence, but the petitioner in this case having undeniably found implicated in

another case in the State of West Bengal for similar offences, prima facie the same appears against the petitioner for grant of bail to him.

7. In the present case, the financial fraud as alleged against the petitioner and others including the M/S. IRL are assessed at more than Rs.342 crores as per the CBI investigation, of course no precise calculation of individual financial liability of the petitioner has been revealed. It is needless to say that what should be the consideration of bail in case of commission of economic offence by the accused has been laid down by Apex Court in Y.S.Jagan Mohan Reddy Vrs. Central Bureau of Investigation; (2013) 7 SCC 450, wherein it has been held as under:-

"34.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.

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 the public/State and other similar considerations."

8. In view of the discussions made hereinabove and taking into consideration the rival submissions made by the respective parties and keeping in view the enormity of allegation levelled against the petitioner for cheating and misappropriating huge sum of money of innocent depositors and taking into account the manner and mode of operating alleged illegal business company and the role allegedly played by the petitioner and his involvement in two cases of similar nature in two States and last, but not the least the magnitude and gravity of economic offence as alleged in this case with petitioner being allegedly part of larger conspiracy in duping innocent depositors for hundred of crores of rupees, this Court does not find any justification to grant bail to the petitioner, especially when the trial is yet to commence.

Hence, the bail application of the petitioner stands rejected.

Accordingly the BLAPL stands disposed of.

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