
(2016) 10 OHC CK 0005
In the Orissa High Court
Case No : BLAPL No.5738 of 2015

Pradeep @ Pradipt Kumar Barik

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 07-10-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Odisha Protection of Interests of Depositors (in Financial Establishments) Act, 2011 — Section 6
Penal Code, 1860 (IPC) — Section 120B, Section 406, Section 420, Section 467, Section 4

Citation : (2017) sup1 CutLTCriminal 48

Hon'ble Judges : Dr. D.P. Choudhury, J.

Bench : Single Bench

Advocate : Additional Standing Counsel, M/s. V. Narasingh, S. Das and S. Devi, Advocates, for the Opposite Party; M/s. S.K. Bhanjadeo, P. Panda and S. Balabantaray, Advocate, for the Petitioner

Final Decision : Disposed off

Judgement

Dr. D.P. Choudhury, J. - This is an application under Section 439 of Cr.P.C. moved by the petitioner for allegedly implicated in the offence punishable under Sections 420, 467, 406, 468, 471, 120-B of I.P.C. and Section 6 of the Odisha Protection of Interests of Depositors (in Financial Establishments) Act, 2011.

FACTS :

2. The factual matrix leading to the case of the prosecution is that the principal accused Rakesh Rana is a retired Lt. Colonel. He formed one Non-Government Organisation (NGO) namely, Sainik Welfare Organisation-India (for short "SWO India") with the purpose to look after the welfare of the sitting and retired servicemen. The principal accused Rakesh Rana is the Chairman of said SWO and the main object of this SWO is to allot plots for the members of the ex-serviceman and serviceman at the cost to be paid by the members. It is further

case of the prosecution that SWO prepared a scheme for allotment of plots in the name and style of "Defence Intercity Vatika, Bhubaneswar" for Rs.35 crores in to approximately. The principal accused Rakesh Rana, who is the Chairman of SWO India made agreement with M/s. Brookson Infrastructure Pvt. Ltd., Bhubaneswar of which co-accused Purna Chandra Panda is the Managing Director to arrange plots at mouza Giringaput, P.S. Chandaka, Bhubaneswar, District-Khurda and develop same for their allotment to the ex-serviceman and serviceman. The principal accused Rakesh Rana through website made advertisement about details of the application for plots and allotment procedure including necessary money to be deposited for allotment of such plots for residential purpose. The informant along with 541 ex-servicemen and servicemen being lured by the advertisement applied for plots and accordingly SWO collected Rs.29 crores from the applicants.

3. It is the further case of the prosecution that the principal accused Rakesh Rana being the Chairman of the SWO paid Rs.19 crores to the co-accused Purna Chandra Panda. Then accordingly the applicants were asked to keep in contact with co-accused Purna Chandra Panda and the petitioner, who is said to be an employee of SWO-India for execution of sale deeds of allotted lands and their development including preparation of Records-of-Right etc. It is alleged, inter alia, that the informant and many other applicants in spite of repeated approach could not get sale deed executed of allotted land and also delivery of possession of same was not made. So, the informant and some investors informed the Economic Offence Wing of Crime Branch to take cognizance of the matter. Although it is stated that 490 investors out of 542 have been supplied with registered sale deeds but on field no such plots exist, the barren land is available without having any boundary and no delivery of possession has also been made following such sale. So, after investigation charge-sheet was submitted against the present petitioner along with other co-accused persons for the offence committed under Sections 406, 420, 467, 468, 471, 120-B of I.P.C. and Section 6 of the Odisha Protection of Interests of Depositors (in Financial Establishments) Act, 2011.

SUBMISSIONS :

4. Mr. S.K. Bhanjadeo, learned Counsel for the petitioner submitted that the petitioner is the employee of SWO India organization and he has been appointed to work under direct instruction of the said organization. He further submitted that the petitioner has not received any money towards deposit made by the respective purchasers and whatever he has received towards sale of plots from the vendees he had deposited with the organization. Since he was working under the direction of the organization SWO-India and executed some sale deeds being General power of attorney holder of the said organization, he has neither any fault nor criminal intention to cheat or commit criminal breach of trust or conspiracy.

5. Learned counsel for the petitioner further submitted that co-accused Purna

Chandra Panda who stated to have sold the property in excess of area, land being barren and delivery possession of the purchase plot being not made, he has been granted bail by this Court. So, it is submitted to release the petitioner on bail keeping his case at par with the case of co-accused Purna Chandra Panda. According to him charge-sheet already has been submitted. So, he submitted to release the petitioner on bail with any conditions as deemed fit and proper.

6. Learned Additional Standing Counsel submitted that even if co-accused Rakesh Rana being the Chairman of SWO India has appointed the petitioner as the employee of SWO-India but due to conspiracy between principal accused Rakesh Rana, Purna Chandra Panda and present petitioner, the petitioner sold the plots having no boundary, no delivery of possession and having no records of right, particularly land in excess of the purchased has been sold by the present petitioner. So, he submitted not to consider the case of the petitioner at par with co-accused Purna Chandra Panda. As such he opposed bail.

7. Mr. V. Narasingh, learned counsel for the informant while raising objection to grant bail, submitted that the informant is an ex-serviceman and he has also invested good amount of money for the plot. He supporting learned Additional Standing Counsel submitted that the sale deed although executed by the present petitioner as employee but there is joint liability of the principal accused Rakesh and the present petitioner. He further submitted that the land sold by present petitioner has no any identity and his criminal liability is not diluted even if he is an employee of the organization.

DISCUSSIONS :

8. Considered the submissions of respective counsels. Statement of witnesses recorded under Section 161 Cr.P.C. disclose that present petitioner is nothing but an employee of the co-accused Rakesh Rana who is the CMD of SWO-India and under his direction he was working and executed the sale deeds in favour of some investors. The material on record do not show that present petitioner had lured the depositors to purchase the plots and the concerned seized sale deeds show that he being the General power of attorney holder of SWO-India executed some sale deeds and the money in advance collected by him deposited in the organization.

9. It appears, co-accused Purna Chandra Panda has been released on bail by this Court in BLAPL No.5263 of 2015 where Purna Chandra Panda being engaged by SWO-India has allegedly sold the lands without having any boundary mentioned and in excess of purchase area. Thus, the case of present petitioner appears to be at par with the case of Purna Chandra Panda. Considering all those aspects including the fact that charge-sheet has been already submitted and no material being produced showing the monetary gain by the petitioner except execution of sale deeds as authorised by principal accused Rakesh Rana, the Chairman and other Directors of SWO-India and fact that he is a local person having no chance of absconding and tampering prosecution witnesses, I take lenient view to

release the petitioner on bail.

CONCLUSION :

10. Let the petitioner be released on bail on furnishing bail bond of Rs.1,00,000/- (rupees one lakh) with two solvent sureties each for the like amount to the satisfaction of the learned Presiding Officer, Designated Court under the O.P.I.D. Act, Cuttack in C.T. Case No.30 of 2015 with the following conditions :

(i) the petitioner will reconcile the defects in respect of the sale made by him being a General power of attorney holder within a period of four months from the date of release on bail;

(ii) He will not tamper with the prosecution witnesses directly or indirectly;

(iii) He will appear before the concerned court which is in seisin over the matter on every date of hearing of the case; and

(iv) He will not commit any offence while on bail. Violation of any of the aforesaid conditions shall entail cancellation of bail.

The BLAPL is disposed of accordingly.