

(2017) 07 OHC CK 0042

In the Orissa High Court

Case No : 1654 of 2017

Rama Chandra Hansdah

APPELLANT

Vs

Republic of India (C.B.I)

RESPONDENT

Date of Decision : 31-07-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 173\(8\)](#), [Section 241](#) - Report of police officer on completion of Investigation - Conviction on plea of guilty
[Indian Penal Code, 18](#)

Citation : (2017) 07 OHC CK 0042

Hon'ble Judges : S.K. Sahoo

Bench : SINGLE BENCH

Advocate : Manas Mohapatra, Kali Charan Mishra

Judgement

1. This is the fourth journey of the petitioner to this Court apart from two unsuccessful journeys to the Hon'ble Supreme Court of India seeking for bail in connection with RC. 50/S/2014-SCB/Kol. dated 26.6.2014 corresponding to SPE Case No.45 of 2014 pending in the Court of learned Special C.J.M., CBI, Bhubaneswar in which charge sheet has been submitted on 19.02.2015 under sections 120-B, 409 and 420 of Indian Penal Code and sections 4, 5 and 6 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978. The petitioner is an elected member to the 16th Lok Sabha from Mayurbhanj Constituency in Odisha who was taken into custody in connection with the case on 04.11.2014 and forwarded to Court on 5.11.2014. He moved an application for bail before the learned Sessions Judge, Khurda at Bhubaneswar in Bail Application No.182 of 2017 which was rejected vide order dated 02.03.2017.

2. The case was instituted on 27.05.2014 on the basis of the first information report submitted by one Binaya Bhusan Das before the Inspector-in-charge, Nayapalli Police Station vide Nayapalli P.S. Case No.146 of 2014 registered under section 420 of Indian Penal Code and sections 4 and 5 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978. It is alleged in the F.I.R. that the

informant was allured by the false promises made by the five Directors of Nava Diganta Capital Services Limited, Bhubaneswar to return double the invested money on completion of one year in the event of deposit of money in their Company and that the informant on good faith deposited a sum of Rs.60,000/- in the said company and was issued with a bond by the Company in that regard but even after the completion of the maturity period of the bond, the Company did not return his money and the accused persons closed their office at Bhubaneswar. It is stated that the Company and its Directors have cheated more than five crores from the informant and other depositors by making false promises.

3. As per the order dated 9.5.2014 of the Hon''ble Supreme Court of India in Writ Petition (Civil) No.401 of 2013 filed by Sri Subrata Chatteraj and Writ Petition (Civil) No.413 of 2013 filed by Alok Jena, F.I.R. in Nayapalli P.S. Case No.146 dated 27.05.2014 was treated as the original FIR in RC. 50/S/2014-Kol. which was registered by Superintendent of Police, CBI, SPE, SIT/SCB, Kolkata under section 420 of Indian Penal Code and sections 4 and 5 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978. During course of investigation, prima facie case was found against the petitioner and other co-accused persons to have entered into criminal conspiracy with each other and in pursuance thereof they collected money from public with dishonest and fraudulent intention alluring of higher returns by violating the norms of R.B.I. and the Companies Act through the companies namely, Nava Diganta Capital Services Ltd. and Nava Diganta Agro Industries Ltd. and they cheated the public to the tune of Rs.8,39,01,580/- and they had also misappropriated the said amount. Accordingly, charge-sheet was submitted on 19.02.2015 under sections 120-B, 420, 409 of Indian Penal Code and sections 4, 5 and 6 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978 against the petitioner and other co-accused persons along with Nava Diganta Capital Services Ltd. and Nava Diganta Agro Industries Ltd. The investigation was kept open as per the provisions under section 173(8) of Cr.P.C. to look into the larger criminal conspiracy, money trail and role of regulatory agencies like ROC, SEBI and RBI.

4. The petitioner for the first time moved an application for bail in BLAPL No.2600 of 2015 before this Court which was rejected vide order dated 14.08.2015 taking into account, inter alia, the fact that further investigation of the case was under progress to unearth further evidence and other aspects of criminal conspiracy and money trailing and also considering that the offence involved misappropriation of huge amount of public money. The petitioner moved the Hon''ble Supreme Court against the aforesaid order vide S.L.P. (Crl.) No.7882 of 2015 which was withdrawn on 24.09.2015 to file a fresh application for grant of bail after the Trial Court frames charges in the case. The Hon''ble Supreme Court directed the Trial Court to make an endeavour to expedite framing of charges in accordance with law.

The petitioner again approached this Court for the second time in BLAPL No.7111

of 2015 for interim bail on the ground to attend the Seventh Session of Sixteenth Lok Sabha which had already commenced and to prepare and submit statements of his assets under the relevant rules applicable to the Members of Parliament before the Lok Sabha Secretariat and to utilize the MPLAD Scheme fund which was allotted to him for the benefit of the people of his constituency and for his treatment as he was suffering from cervical spondylitis and for the treatment of his wife who was suffering from dysfunction of uterine bleeding. The bail application was rejected vide order dated 28.03.2016 holding that the charges have not yet been framed by the Trial Court and the grounds taken for grant of interim bail are not satisfactory and also taking into account the nature and seriousness of the economic offence alleged against the petitioner and the larger interest of public and State.

The petitioner moved the Hon'ble Supreme Court against the aforesaid order vide S.L.P. (Crl.) No.3119 of 2016 which was dismissed vide order dated 25.04.2016.

The petitioner again approached this Court for the third time in BLAPL No.4447 of 2016 which was withdrawn on 22.11.2016 to approach the A.C.J.M., Bhubaneswar.

5. Mr. Manas Mohapatra, learned Senior Advocate appearing for the petitioner contended that after about one year and four months of the order passed by the Hon'ble Supreme Court in S.L.P. (Crl.) No.7882 of 2015 directing the learned Trial Court to expedite framing of charges, charge was framed by the Special C.J.M., C.B.I., Bhubaneswar on 17.01.2017 under sections 120-B, 420, 409 of the Indian Penal Code read with sections 4, 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. It was contended that the petitioner has remained in jail custody for more than two years and eight months and in the meantime trial has already commenced since 06.04.2017 and seventeen witnesses have been examined till 17.07.2017 and none of the witnesses examined before the learned Trial Court has whispered anything against the petitioner. He further submitted that the petitioner was the director of the company in between 2011 to 2013 for record purpose and he had not actively participated in the affairs of the companies. It was further contended that two of the coaccused persons namely Anjan Kumar Baliarsingh and Kartikeya Parida pleaded guilty before the learned Trial Court and accordingly, they were convicted in view of the provision under section 241 of Cr.P.C. and sentenced to undergo rigorous imprisonment for three years with a fine of Rs.10,000/-. It was further contended that one of the co-accused namely Pradip Kumar Pattnaik is on bail since 13.07.2015 and there is no allegation of any influence or tampering with the evidence against any of the accused persons. It was further contended that the MPLAD Scheme fund of the petitioner could not be utilized due to his detention which has affected mostly the tribal people and therefore, the bail application may be favourably considered. Learned counsel for the petitioner relied upon the bail orders passed by the Hon'ble Supreme Court in case of Dr.

Tirupati Panigrahi, Preeti Bhatia, Indu Dewan and Pravat Kumar Das in similar cases and also by this Court in similar cases in favour of some of the accused persons. Mr. Kali Charan Mishra, learned counsel appearing for the C.B.I. contended that the further investigation of the case in respect of certain vital aspect is at the concluding stage and out of 116 nos. of charge sheet witnesses, only seventeen have been examined and many more relevant witnesses are there in the case who have stated about the complicity of the petitioner in the crime and if at this stage, the petitioner is enlarged on bail, there is every likelihood of tampering with the evidence as the petitioner is a very politically influential person. It is further contended that there is no change in the circumstances except the fact that trial has commenced and some witnesses have been examined and therefore, successive bail application should not be entertained. Learned counsel for the C.B.I. filed the statements of nineteen witnesses namely Chandan Kumar Das, Gypsy Bhuyan, Manas Dash, Sanjay Kumar Mahapatra, B.N. Mishra, Chittaranjan Bihari, Santosh Kumar Mishra, Golaka Charan Martha, Prasanta Kumar Pradhan, Manas Ranjan Tripathy, Duryodhan Sahoo, Nishat Anjum, Raja Kishore Jena, Biraja Kanta Khandayatarya, Bishnu Prasad Dash, Sabita Dash, Ganesh Dash, Urbashi Dash and Rakesh Kumar Jha who have implicated the petitioner.

6. Considering the submissions made by the learned counsels for the respective parties, it is apparent that even though the Hon'ble Supreme Court directed the learned Trial Court to make an endeavour to expedite framing of charges as per the order dated 24.09.2015 in S.L.P. (Crl.) No.7882 of 2015 but charge was framed only on 17.01.2017. The order sheet of the learned Trial Court would go to show that the police papers were made ready on 16.11.2015 and those were supplied to the petitioner and other co-accused persons. When the case was ready for framing of charge, one of the co-accused filed a petition for time to file a discharge petition and some of the co-accused persons filed petitions to supply some deficit police papers and accordingly, direction was issued to the prosecution to supply the deficit police papers. The charge could not be framed at an earliest since the Presiding Officer had already been superannuated since 31.01.2016. However, the Judicial Officer in charge of the learned Trial Court passed orders from time to time directing supply of required documents by different accused persons. The prayer made by the petitioner to use his M.P. letter pad for the interest of his constituency was allowed as per order dated 06.09.2016. After joining of the Presiding Officer in December 2016, the petitions filed by the two accused persons namely Subarna Nayak and Pradip Pattnaik for discharge were considered and rejected vide order dated 07.01.2017 and on the next date, i.e. on 17.01.2017 the learned Trial Court framed charges against the petitioner and other co-accused persons under sections 120-B, 420, 409 of the Indian Penal Code read with sections 4, 5, 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. On a conspectus reading of the order, it appears that the charge could not be framed earlier mainly due to preparation of police papers and the fact that the Presiding Officer was superannuated since

31.01.2016 and the in charge Judicial Officer could not have taken up the trial of the case. However, the petitions filed by different accused persons from time to time for supply the deficit police papers were entertained and those were supplied and ultimately after joining of the Presiding Officer in December 2016, the discharge petitions filed by some of the co-accused persons were dealt with and thereafter, charge was framed on 17.01.2017. Therefore, in the aforesaid scenario, merely because delay was caused for framing of charge, the same cannot be a ground to enlarge the petitioner on bail. Even though out of the list of nineteen witnesses furnished by the learned counsel for the C.B.I., one witness namely Manas Ranjan Tripathy has already been examined as P.W.13 before the learned Trial Court and he has not stated anything against the petitioner but on going through the statements of the other eighteen witnesses who are yet to be examined in the learned Trial Court, I find that they have implicated the petitioner. The statements of those eighteen witnesses are very much relevant so far as the prosecution case relating to the petitioner is concerned and the reasonable apprehension of the prosecution that in the event of release of the petitioner on bail, the chance of tampering with the evidence of those witnesses cannot be ruled out, has got sufficient force particularly when the petitioner is the Member of Parliament and highly politically influential person. What would be the evidentiary value of those witnesses, if examined during trial has to be decided by the learned trial Court. It cannot be lost sight of that twice the petitioner has become unsuccessful in getting bail before the Hon'ble Supreme Court and as submitted by the learned counsel for the C.B.I., further investigation on some vital aspect of the case is at the concluding stage. Pleading of guilt by the co-accused persons and passing order of conviction on such plea and imposing sentence by the learned trial Court is not a positive factor for the petitioner for grant of bail. Release of accused persons in similar cases cannot be a factor for grant of bail inasmuch as each case must be settled on its own facts and it would not be appropriate to lay down any general rule. Even the release of a co-accused in the same case is not a factor to grant bail to an accused on the ground of parity where the order granting bail to the co-accused contains no cogent reasons or if the same has been passed in flagrant violation of well settled principle of law and ignores to take into consideration the relevant facts essential for granting bail.

In the case of State of U.P. -Vrs.- Amarmani Tripathi reported in (2005) 8 Supreme Court Cases 21, it is held as follows:-

"15. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of accused absconding or fleeing if released on bail; (v) character, behavior, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail."

In the case of Kalyan Chandra Sarkar -Vrs.- Rajesh Ranjan reported in 2004 Criminal Law Journal 1796, it is held that the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe.

Law is well settled that an accused has a right to make successive applications for grant of bail but successive bail applications are permissible under the changed circumstances. The change of circumstances must be substantial one which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence. Without the change in the circumstances, the subsequent bail application would be deemed to be seeking review of the earlier rejection order which is not permissible under criminal law. While entertaining such subsequent bail applications, the Court has a duty to consider the reasons and grounds on which the earlier bail applications were rejected and what are the fresh grounds which persuade it warranting the evaluation and consideration of the bail application afresh and to take a view different from the one taken in the earlier applications. There must be change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which the application for bail of an accused that has been rejected earlier can be reconsidered.

Considering the nature and gravity of the accusation, the nature of supporting evidence, its serious adverse impact on the fabric of the society, misappropriation of huge amount of public money, the severity of punishment in case of conviction, the reasonable apprehension of the prosecution relating to the magnitude of influence the petitioner is likely to cause once he is released from jail custody by taking over the task of tampering with the evidence and manipulating witnesses and the fact that eighteen witnesses who have implicated the petitioner as per the list supplied by the learned counsel for C.B.I. are yet to be examined in the trial Court and absence of any substantial change of circumstances or fresh grounds after the rejection of the earlier two bail applications by this Court, I am not inclined to reconsider the prayer for bail and release the petitioner on bail.

The petitioner may renew his prayer for bail before the learned Trial Court after the examination of the eighteen witnesses as per the list submitted by the C.B.I. Since the petitioner has remained in custody for more than two years and eight months, the learned Trial Court shall do well to expedite the trial and conduct the trial on day-to-day basis and make every endeavour to conclude the trial by end of December 2017. The prosecution should be asked specifically by the learned trial Court as to which witnesses they intend to examine from the left out witnesses as per the charge sheet and in that respect a memo should be filed by

the prosecution within a week from the next date of posting the case for trial.

Before parting, I would humbly say that corruption is such a contagious disease that it may affect any person and at any point of time. It requires a lot of mental strength, sacrifice, detachment and continuous effort to avoid such disease. Like an unending thirst for human blood by a tiger, a corrupted person is never satisfied with the wealth he has amassed. He becomes blind to all kinds of ethics, rule of law, societal obligation and becomes self-centric. He fails to learn the lesson from the replies given by the family members of Dasyu Ratnakar when he enquired from them if they would receive some portions of his vice which he had done for their maintenance. He fails to remember the last wishes of the great Greek King Alexander to put his hands outside the coffin to let people understand that he came to this world in empty hands and he will leave this world also in empty hands. A man having clean mind and strong character can fight corruption.

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