

(2015) 08 OHC CK 0014
In the Orissa High Court
Case No : BLAPL No. 2600 of 2015

Rama Chandra Hansdah

APPELLANT

Vs

Republic of India (C.B.I)

RESPONDENT

Date of Decision : 14-08-2015

Acts Referred:

Constitution of India, 1950 — Article 32
Criminal Procedure Code, 1973 (CrPC) — Section 173(8), 439
Penal Code, 1860 (IPC) — Section 120-B, 409, 420
Prize Chits and Money Circulation Schemes Banning Act, 1978 — Section 4, 5, 6

Citation : (2016) CriLJ 697

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

Bench : Single Bench

Advocate : Binaya Kumar Mohanty and Jaganath Sahu, for the Appellant; V. Narasingh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.K. Sahoo, J.

"Power tends to corrupt, and absolute power corrupts absolutely."

- John Acton

1. The petitioner Rama Chandra Hansdah who is an elected member to the 16th Lok Sabha in 2014 from Mayurbhanj Constituency in Odisha has filed this application under section 439 Cr.P.C. 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 section 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 was taken into custody on 4.11.2014 and he was forwarded to Court on 5.11.2014 and he moved an application for bail before the learned

Sessions Judge, Khurda at Bhubaneswar in Bail Application No. 589 of 2014 which was rejected vide order dated 13.5.2015.

2. It reveals from the charge sheet that initially the case was registered at Nayapalli Police Station, Bhubaneswar on 27.05.2014 on the basis of First Information Report lodged by one Binaya Bhusan Das, son of Balaram Das, village-Pritipur, P.S.-Binjharpur, Dist-Jajpur before the Inspector-in-charge, Nayapalli Police Station vide Nayapalli P.S. Case No. 146 of 2014 under section 420 of Indian Penal Code and sections 4 and 5 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978 against five accused persons, namely, Anjan Baliarsingh, Pradeep Pattnayak, Kartika Parida, Bijaya Barala and Hemanta Sahu. It is alleged in the FIR that the informant was allured by the false promises made by those five accused persons who are the 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 by trusting them, the informant deposited a sum of Rs. 60,000/- in the said company and was issued with a bond by the Company in that regard. On the completion of the maturity period of the bond, the Company did not return his money even after repeated contact with the accused persons. It is further stated in the FIR that the accused persons closed their office at Bhubaneswar and their mobile phones were also found to be switched off. 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. The Hon''ble Supreme Court of India vide order dated 9.5.2014 passed in Writ Petition (Civil) No. 401 of 2013 filed by Sri Subrata Chattoraj and Writ Petition (Civil) No. 413 of 2013 filed by Alok Jena directed transfer of the investigation of the Chit Fund Scam cases, registered in different police stations in the State of West Bengal and Odisha, from the State Police Agency to the Central Bureau of Investigation (CBI). So far as the State of Odisha is concerned, the Hon''ble Supreme Court directed transfer of investigation of all cases registered against 44 companies mentioned in the order dated 26.03.2013 passed in Writ Petition (Civil) No. 413 of 2013.

In compliance of the order of the Hon''ble Supreme Court of India, RC. 50/S/2014-Kol. dated 26.06.2014 was registered, as one of the 44 companies was Nava Diganta Capital Service Ltd., Bhubaneswar and accordingly 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 against Anjan Baliarsingh, Pradeep Pattnayak, Kartik Parida, Bijaya Baral and Hemant Sahoo under section 420 of Indian Penal Code and sections 4 and 5 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978 and the case was entrusted to Sri S.K. Samal, Inspector of Police, CBI, SPE, SCB, SIT, Kolkata for investigation.

4. Investigation revealed that the petitioner along with co-accused persons floated four numbers of Companies namely Nava Diganta Capital Services Ltd.,

Nava Diganta Properties Ltd., Nava Diganta Projects Ltd. and Nava Diganta Agro Industries Ltd. with different objectives as reflected in the respective Memorandum of Association being registered with Registrar of Companies (ROC), Cuttack during 2011 and 2012. During the relevant period of 2011 to 2013, the petitioner and five other co-accused persons namely Anjan Kumar Baliarsingh, Pradeep Kumar Pattnayak, Kartikeya Parida, Subarna Nayak and Hitesh Kumar Bagarti were the Directors of the four companies of Nava Diganta Group. Investigation further revealed that the petitioner and the other five co-accused persons were the active Directors of Nava Diganta Group of Companies and they were the key persons in the management of the said companies. They stated to have collected huge deposits from the public alluring the depositors/agents of higher returns through two companies namely Nava Diganta Capital Services Ltd. and Nava Diganta Agro Industries Ltd. The evidence of the employees of Nava Diganta group of companies revealed that the petitioner and other five co-accused persons were carrying forward the day to day business of the companies and they had cheated the depositors and the deposited amounts have been misappropriated by them. Investigation further disclosed that the Bank accounts of Nava Diganta group of companies were operated by the accused persons except Anjan Kumar Baliarsingh which were maintained at Allahabad Bank, Axis Bank, IDBI Bank and ICICI Bank. The certificates were issued to the investors under the signatures of Anjan Kumar Baliarsingh which were also signed either by the petitioner or co-accused Kartikeya Parida or Pradeep Kumar Pattnayak at the place meant for the Director. The investigation further revealed that Nava Diganta Group of Companies i.e. Nava Diganta Capital Services Ltd. and Nava Diganta Agro Industries Ltd. had collected money from public during the period 2011 to 2013 by issuing non-convertible unsecured debentures like flexi debenture, wealth debenture, income debenture and redeemable preference shares.

Investigation further revealed that the guidelines of Reserve Bank of India were not complied with by Nava Diganta Capital Services with regard to issuance of the debentures to public at large and various sections of Companies Act were also violated. One list showing Nava Diganta Capital Services Ltd. customer pending dues and another list showing Nava Diganta Agro Industries Ltd. customer pending dues were seized. According to the said lists, Nava Diganta Capital Services Ltd. and Nava Diganta Agro Industries Ltd. were to pay Rs. 8,04,86,580/- and Rs. 34,15,000/- respectively to the customers excluding the interest and the said amounts were collected from public during the period from October 2011 to May 2013. The petitioner and other co-accused persons were the active Directors and they were to pay in total Rs. 8,39,01,580/- to the customers excluding the interest as per the lists. Investigation further revealed that a sum of Rs. 2,61,200/- was paid to the petitioner through Bank Account from the account of Nava Diganta Capital Services Ltd. maintained at IDBI, Jagatsinghpur. Though Bijay Kumar Baral and Hemanta Kumar Sahoo were the FIR named accused persons but during investigation, it was found that both of

them had no role in the business activity of the company and those two persons performed their duties like other employees of the Company and accordingly no criminal liability was fixed on them.

From the investigation conducted, prima facie case was established against the petitioner and other co-accused persons namely Anjan Kumar Baliarsingh, Pradeep Kumar Pattnayak, Kartikeya Parida, Subarna Naik and Hitesh Kumar Bagarti who stated 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 RBI and 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 by Sri S.K. Samal, Inspector of Police, CBI, SPE, SCB, SIT, Kolkata 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 Circulations Schemes (Banning) Act, 1978 against the petitioner and co-accused Anjan Kumar Baliarsingh, Pradeep Kumar Pattnayak, Kartikeya Parida and Hitesh Kumar Bagarti along with Nava Diganta Capital Services Ltd. and Nava Diganta Agro Industries Ltd. The investigation was kept open as per the provisions of section 173(8) Cr.P.C. to look into the larger criminal conspiracy, money trail and role of regulatory agencies like ROC, SEBI and RBI.

5. During course of investigation, the petitioner was taken into custody and after completion of investigation, his prayer for bail was turned down by the learned Sessions Judge, Khurda at Bhubaneswar on the ground that all the bank accounts of Nava Diganta Group of Companies were operated by the petitioner and other Directors and that the accused persons had entered into a criminal conspiracy and in pursuance thereof, they had collected money from the public with dishonest intention by alluring of higher returns by violating the norms of RBI and Companies Act and they had cheated the public to the tune of Rs. 8,38,91,580/- and misappropriated the said amount. It was further held that the submission of charge-sheet has strengthened the prosecution allegations and since the economic offences having deep-rooted conspiracies and involving huge loss to general public need to be viewed seriously, the bail application was rejected.

6. Learned counsel for the petitioner Mr. Binaya Kumar Mohanty submitted that neither in the initial FIR registered on 27.05.2014 at Nayapalli Police Station nor in the FIR registered by the CBI on 26.6.2014, the petitioner was named as an accused. He further submitted that in none of these FIRs, there is any allegations whatsoever against the petitioner. He further submitted that though both the FIRs were lodged against five persons including Binaya Kumar Baral and Hemant Kumar Sahoo but those two persons were not charge-sheeted as no prima facie case was found against them which indicate that right from the inception of the case, false allegations had been made against some persons. The learned

counsel further submitted that the petitioner was a mere signatory to the minutes of the meeting of the Board of Directors and he was a nominal Director of the Company having only 8% of shares as per the Articles of Association of Nava Diganta Capital Services Ltd. and Form-32 as stated by Chandan Kumar Das, charge-sheet witness No. 2. The learned counsel further submitted that not a single depositor has stated that they had deposited money in the Company on the assurance of the petitioner rather they have implicated co-accused Anjan Kumar Baliarsingh, CMD of the company and the other Director Pradeep Kumar Pattnayak who has already been released on bail. The learned counsel further submitted that the petitioner had paid Rs. 3,55,000/- in shape of cash to the Company for purchase of his 8% share and subsequently taking into account the proportionate share, an amount of Rs. 2,61,200/- has been refunded to him. The learned counsel further submitted that when the petitioner came to know that the CMD was acting violating the provisions of the Companies Act and the guidelines of the RBI, he informed the regulating authorities and when no action was taken, he resigned from the company. The learned counsel further submitted and also mentioned in his written note of argument that the informant has got refund of his money which he had deposited for the purchase of share certificate and he has expressed that he was not interested to proceed further with the case as per his affidavit submitted in the Court of learned A.C.J.M. -cum-Special C.J.M., CBI, Bhubaneswar on 06.08.2014 in SPE Case No. 45 of 2014. The learned counsel further urged that the investigating agencies have not investigated the matter properly and submitted the charge-sheet in a mechanical manner. He further urged that the petitioner is a law abiding citizen and Member of Parliament representing Mayurbhanj Parliament Constituency and he has cooperated with the investigation and there is no possibility of fleeing from justice in the event he is enlarged on bail. He further highlighted that due to judicial confinement of the petitioner, local developmental works in Mayurbhanj district has been jeopardized and as the petitioner is attached to many educational institutions, due to his absence, policy decisions are not being taken in those institutions. The learned counsel further submitted that by the time the first information report was lodged on 27.05.2014, the petitioner was not the Director of Nava Diganta Capital Services Ltd. and he had tendered his resignation since 20.5.2013 which had been duly accepted by the Registrar of the Companies in the prescribed Form-32 pursuant to Sections 303(2), 264(2), 266(1)(a) and 266(1)(b)(iii) of the Companies Act, 1956. He further submitted that the case is mainly based on documentary evidence and all the relevant documents have been seized by the CBI and in the meantime, more than a year has passed since the registration of the F.I.R. by the CBI. The learned counsel further submitted that another Director namely, Pradeep Kumar Pattnayak has already been released on bail by this Court in BLAPL No. 25613 of 2014 vide order dated 13.7.2015 and the petitioner stands on the similar footing and as such on the ground of parity and equity, the bail application of the petitioner should be favourably considered. The learned counsel finally urged that even if for the sake of argument, it is accepted that prima facie case is made out against

the petitioner but since the alleged misappropriation amount involved in the case is not a huge one and when there is no chance of absconding of the petitioner or tampering with the evidence, taking into account the period of detention of the petitioner, the bail application deserves favourable consideration.

7. The learned counsel for the CBI, Mr. V. Narasingh on the other hand refuting the contentions raised by the learned counsel for the petitioner submitted that during investigation, documents have been collected and relevant witnesses have been examined which clearly show the involvement of the petitioner as one of the key conspirators of the case. He further submitted that preliminary charge sheet was filed on 19.02.2005 and further investigation of the case is under progress to unearth further evidence and other aspects of criminal conspiracy and money trailing. The learned counsel placed the statements of Assistant Registrar of Companies namely Chandan Ku. Das, Chartered Accountant Manash Dash, Company Secretary Sanjay Ku. Mohapatra, Upper Division Clerk Chitta Ranjan Bihari serving in the Office of Registrar of the Companies and contended that from such statements, it is amply clear that the petitioner was the Director of all the four Companies i.e. Nava Diganta Capital Services Ltd., Nava Diganta Projects Ltd., Nava Diganta Properties Ltd. and Nava Diganta Agro Industries Ltd. in between 2011 to 2013. He further submitted that charge sheet has also been submitted against Nava Diganta Capital Services Ltd. and Nava Diganta Agro Industries Ltd. and the petitioner was one of the share holders and also the Director in both the companies during the relevant period which has been stated by number of witnesses. The learned counsel further submitted that the statement of Pabitra Ku. Dutta, Manager, Reserve Bank of India, Bhubaneswar, charge sheet witness No. 52 indicates that M/s. Nava Diganta Capital Services Ltd. was never authorized by the Reserve Bank of India to collect deposits from the public. He further submitted that it appears from the statement of one Biranchi Narayan Mishra, Managing Partner of a Chartered Accountants firm that while issuing non-convertible unsecured debentures, Nava Diganta Capital Services Ltd. did not follow the guidelines of RBI and the provisions of the Companies Act were also flouted. The learned counsel further submitted that the petitioner was a key person in the management of the Nava Diganta Group of Companies and huge amounts on different dates through self cheques under the signatures of the petitioner were withdrawn from the account of the Company and some of the bonds were also issued under the signatures of the petitioner along with the signatures of co-accused Anjan Kumar Baliyarsingh to the investors. The learned counsel further submitted that the petitioner is a quite influential political person and companies were formed while he was MLA of Odisha Legislative Assembly from Saraskana Constituency and there is every chance that in the event of his release on bail, the petitioner may influence the witnesses by virtue of his political as well as financial power as he is the sitting Member of Parliament. He further submitted that there is strong apprehension that the defrauded amount which is yet to be traced may be utilized by the petitioner to influence the witnesses. He further urged that in view of the

statement of the learned counsel for the petitioner that the informant is no more interested to pursue the matter as he has got refund of his money clearly indicates that the accused persons have started interfering with the course of justice by tampering with the witnesses. The learned counsel further submitted that the petitioner does not stand on the similar footing like the co-accused Pradeep Kumar Pattnayak who has been enlarged on bail by this Court and therefore the claim of parity and equity is wholly misconceived. While concluding his arguments, the learned counsel emphasized that at this crucial stage when the further investigation is under progress, if the petitioner is enlarged on bail, he may try to interfere with the course of investigation, tamper with witnesses, fabricate evidence, intimidate or create obstacles in the path of investigating officers and derail the case.

8. Before delving upon the rival contentions advanced by the learned counsel for the parties, it would be better to first deal with the petition filed by the Global Human Rights Communications vide Misc. Case No. 677 of 2015 to intervene in the matter and to be added as opposite party and to grant permission to file necessary affidavit bringing out material facts for just adjudication of the case. The prayer portion of the Misc. Case is ridiculous inasmuch as it is mentioned "to be impleaded as an opposite party in the aforesaid writ petition" and "bringing out material facts for just decision of the writ petition". This is not a writ petition but a bail petition. This exhibits carelessness in drafting and presenting papers to this Court.

Copy of the intervention application was served on the learned counsels for the petitioner as well as C.B.I. The learned counsels for petitioner and C.B.I. did not file any written objection to such application but learned counsel appearing for the petitioner vehemently opposed the application for intervention mainly on the ground that the proposed intervener has no locus standi and he is in no way connected with this case inasmuch as he is neither the informant nor an aggrieved party and accordingly urged that the application for intervention should be rejected at the threshold.

It is mentioned in the intervention application that the intervener petitioner is a registered civil society organization working for the interest of vulnerable section of the society and it is represented by its Executive Director who is a public spirited person dedicated to the welfare and upliftment of poor and marginalized groups and communities. It is further indicated that the Court should unhesitatingly and without the slightest qualms of conscience cast aside the technical rules of procedure in the exercise of its dispensing power and treat the approach/prayer of the public minded individual for dispensing justice for the poor and vulnerable section. It is further indicated that this Court having inherent jurisdiction and exercising its discretion is required to innovate new methods and devise new strategies for the purpose of providing access of justice to large masses of people who are being denied their basic rights for redressal of their grievances. The learned counsel relied upon the observations made by the

Hon"ble Supreme Court in cases of S.P. Gupta Vs. President of India and Others, AIR 1982 SC 149 : (1981) 1 SCC 87 Supp : (1982) 2 SCR 365 , Janata Dal Vs. H.S. Chowdhary and Others, AIR 1993 SC 892 : AIR 1992 SC 892 : (1993) CriLJ 600 : (1992) 3 Crimes 199 : (1992) 5 JT 213 : (1992) 2 SCALE 338 : (1992) 4 SCC 305 : (1992) 1 SCR 226 Supp , Vineet Narain and Others Vs. Union of India (UOI) and Another, AIR 1998 SC 889 : (1998) CriLJ 1208 : (1997) 10 JT 247 : (1999) 1 SCALE 442 : (1997) 7 SCALE 656 : (1997) 6 SCALE 16 : (1998) 1 SCC 226 : (1997) 6 SCR 595 Supp : (1998) AIRSCW 645 : (1997) 10 Supreme 476 and Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc., (1992) 1 ACC 332 : AIR 1992 SC 248 : (1991) 3 ComplJ 213 : (1991) 6 JT 8 : (1991) 2 SCALE 675 : (1991) 4 SCC 584 : (1991) 1 SCR 251 Supp : (1992) 1 UJ 505 to entertain his intervention application.

Section 439 Cr.P.C. which deals with special powers of High Court and Court of Session regarding bail indicates that before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the bail application to the Public Prosecutor unless the Court is of the opinion that it is not practicable to give such notice but the reasons as to why it is not practicable has to be recorded in writing.

Charge sheet has been submitted in this case, inter alia, for offence under section 409 of Indian Penal Code which is punishable with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. In view of the proviso to section 439 Cr.P.C. and the fact that charge sheet has been submitted, inter alia, for offence under Section 409 of Indian Penal Code, notice of the bail application is required to be given to the Public Prosecutor.

Even though the section 439 Cr.P.C. does not provide for hearing of an informant of the case or a de facto complainant or a victim or an aggrieved party at the time of consideration of the bail application of one accused, but keeping in view the ratio laid down in case of Pramod Kumar Panda Vs. Republic of India(2015) ALLMR(Cri) 289 : (2015) CriLJ 1973 : (2015) 2 ILR 355 , it is clear that while adjudicating a bail application, if the Court feels that the informant/de facto complainant/victim/aggrieved party is required to be heard for an effective adjudication, then the Court can issue notice to such person for giving him a reasonable opportunity of hearing. If the informant/de facto complainant/victim/aggrieved party suo motu appears in Court in an application for bail either to support or oppose such application and prays before the Court to give him an opportunity of hearing, the Court may accept such prayer if it feels the necessity of hearing such person in the interest of justice and for the just decision of the case. The counsel for the informant/de facto complainant/victim/aggrieved party can always appear during hearing of the bail application and assist the State Counsel even if he is not awarded a right of audience in the matter by the Court. He can also assist the Court if any query is put forth to him. Where it appears

that there are lot of aggrieved persons and all of them pray before the Court to give them an opportunity of hearing in an application of bail, the Court may be reluctant to give them such opportunity if it feels that it would be a time consuming affair or in view of the time constraints, it would not be feasible to give each of them an opportunity of hearing or it would delay the disposal of such application. However if the Court feels in such cases to hear one of the aggrieved parties who can highlight the common grievances of all which is not properly addressed by the State Counsel, the Court can give an opportunity of hearing to such party. No particular category of cases can be enumerated as to where the informant/de facto complainant/victim/aggrieved party can be given an opportunity of hearing in an application for bail in as much as it would depend upon the nature and gravity of the offences as well as the discretion of the Court which is to be exercised judiciously with reasonable care and caution. If a person is neither an informant nor victim but claim himself to be an aggrieved party and prays for an opportunity of hearing, the Court has to decide whether such person is an aggrieved party in the context of the case or not and if so, whether a right of hearing is to be given to him or not to take a right decision in the matter.

In view of the provisions of the Criminal Procedure Code, a third party stranger has no locus standi to oppose an application for bail. The stranger may be ultimately interested in the outcome of the investigation or trial but this fact by itself would not be sufficient to give him locus in an application for bail filed by the accused. If the statutory provisions are clear and unambiguous and the field of procedure is already occupied by a procedural law, the general rule or prayer permitting hearing with an intention to bring more and more facts on record cannot be permitted. Whatever is to be done, is to be done in accordance with the Code of Criminal Procedure and once Code does not permit a right of audience to the stranger while hearing a case for grant of bail to the applicant/accused, that cannot be transplanted by making necessary implications based on principles of natural justice etc.

There is no force in the argument advanced by learned Counsel for the proposed intervener and the same can also not be accepted. A stranger or the third party does not have the locus standi to oppose the bail application inasmuch as by granting permission to such party, it will result in multiplicity of litigation and such applications would also result in side-tracking the focus of the Court from the main issue which will be the question of grant of bail to the accused, be that anticipatory or custodial and take the Court into the field of apportionment of blame and trading of charges and counter charges.

The ratio of the decisions in the cases cited by the learned counsel for the proposed-intervenor is not applicable as the facts of those cases are different from this case and the point raised in this case was neither raised nor discussed.

In case of *Simranjit Singh Mann Vs. Union of India and another*, AIR 1993 SC 280 : AIR 1992 SC 280 : (1993) CriLJ 37 : (1992) 5 JT 441 : (1992) 2 SCALE 506 : (1992) 4 SCC 653 : (1992) 1 SCR 592 Supp , where a question was raised

as to whether a third party who is a total stranger to the prosecution culminating in the conviction of the accused has any "locus standi" to challenge the conviction and sentence awarded to the convicts in a petition brought under Article 32 of the Constitution, Hon"ble Supreme Court held as follows:--

"7. Ordinarily, the aggrieved party which is affected by any order has the right to seek redress by questioning the legality, validity or correctness of the order, unless such party is a minor, an insane person or is suffering from any other disability which the law recognises as sufficient to permit another person i.e. next friend, to move the Court on his behalf. If a guardian or a next friend initiates proceedings for or on behalf of such a disabled aggrieved party, it is in effect proceedings initiated by the party aggrieved and not by a total stranger who has no direct personal stake in the outcome thereof. In the present case, no fundamental right of the petitioner before us is violated; if at all the case sought to be made out is that fundamental rights of the two convicts have been violated. The two convicts could, if so minded, have raised the contention in the earlier proceedings but a third party, a total stranger to the trial commenced against the two convicts, cannot be permitted to question the correctness of the conviction recorded against them. If that were permitted, any and every person could challenge convictions recorded day-in and day-out by Courts even if the persons convicted do not desire to do so and are inclined to acquiesce in the decision....."

9. For the reasons mentioned above, I am of the view that the application bearing Misc. Case No. 677 of 2015 filed by the intervener/applicant to be impleaded as a party is not maintainable as it is a third party stranger and accordingly cannot be permitted to have its say by filing any affidavit as prayed for and also to oppose the prayer for bail. The application is totally misconceived, vexatious and is therefore dismissed.

10. The law relating to bail in a case of economic offences in is more or less settled in view of the decisions of the Hon"ble Supreme Court in case of Y.S. Jagarmohon Reddy v. CBI reported in (2013) 55 Orissa Criminal Reports (SC) 825 , State of Gujarat Vs. Mohanlal Jitamajji Porwal and Another, AIR 1987 SC 1321 : (1987) CriLJ 1061 : (1987) 2 Crimes 1 : (1987) 13 ECC 12 : (1987) 29 ELT 483 : (1987) 1 JT 783 : (1987) 1 SCALE 598 : (1987) 2 SCC 364 : (1987) 2 SCR 677 : (1987) 2 UJ 129 and Nimmagadda Prasad Vs. Central Bureau of Investigation, (2013) 5 AD 549 : AIR 2013 SC 2821 : (2013) CriLJ 3449 : (2013) 8 JT 18 : (2013) 3 RCR(Criminal) 175 : (2013) 7 SCALE 25 : (2013) 7 SCC 466 : (2013) AIRSCW 3795 : (2013) 4 Supreme 77 .

Economic offences are considered grave offences as it affects the economy of the country as a whole and such offences having deep rooted conspiracy and involving huge loss of public fund are to be viewed seriously. Economic offence 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.

No doubt at the stage of granting bail, detailed examination of evidence and elaborate discussions on merits of the case need not be taken but the order must reflect the reasons for arriving at a prima facie conclusion as to why bail was being granted particularly when the accused-petitioner is charged with economic offences. Discretion should be used in a proper and judicious manner and the Court must take note of the nature of accusation, the nature of supporting evidence, the severity of punishment in case of conviction, reasonable apprehension of tampering with the evidence, criminal antecedents etc. Bail should not be denied merely because the sentiments of the community are against the accused.

11. The learned counsel for the petitioner claimed bail on the ground of parity as the co-accused Pradeep Kumar Pattnayak to whom similar role was attributed has been released on bail in BLAPL No. 25613 of 2014 vide order dated 13.7.2015.

It is contended that the said co-accused was also one of the Directors of Nava Diganta Group of Companies and an amount of Rs. 2,66,000/- had been transferred to his Bank Account from the account of Nava Diganta Capital Services Ltd. like the petitioner. It is further urged that the petitioner had resigned from the Company since 20.5.2013 whereas the said co-accused was continuing as the Director till he was taken into custody.

The learned counsel for the C.B.I. on the other hand submitted that the petitioner is a very influential political personality unlike the co-accused who is an Advocate and the Hon"ble Supreme Court in case of Subrata Chattoraj Vs. Union of India (UOI) and Others, (2014) AIRSCW 2828 : (2014) 7 JT 435 : (2014) 6 SCALE 593 transferred the investigation of chit fund scam cases from State Agency to CBI, inter alia, taking note of the fact that the investigation revealed involvement of several political and other influential personalities wielding considerable clout and influence. The learned counsel for the CBI further submitted that when no cogent reasons have been assigned for granting bail to the co-accused and relevant facts have not been taken into consideration while adjudicating the bail of the co-accused, such an order passed in BLAPL No. 25613 of 2014 cannot form the basis for the claim of parity. The learned counsel for the CBI relied upon a decision of this Court in case of Preeti Bhatia Vs. Republic of India(2015) 1 OLR 662 wherein it is held as follows:--

"7.Parity cannot be the sole ground for grant of bail. It is one of the grounds for consideration of the question of bail. There is no absolute hidebound rule that bail must necessarily be granted to the co-accused, where another co-accused has been granted bail. Even at the stage of subsequent bail application when the bail application of the co-accused whose bail had been earlier rejected

is allowed and co-accused is released on bail, even then also the Court has to satisfy itself that, on consideration of more materials placed, further developments in the investigations or otherwise and other different considerations, there are sufficient grounds for releasing the applicant on bail. If on careful scrutiny in a given case, it transpires that the case of the applicant before the Court is identically similar to the accused on facts and circumstances who has been bailed out, then the desirability of consistency will require that such an accused should also be released on bail. A Judge is not bound to grant bail to an accused on the ground of parity even where the order granting bail to an identically placed 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. Such an order can never form the basis for a claim of parity. It will be open to the Judge to reject the bail application of the applicant before him as no Judge is obliged to pass orders against his conscience merely to maintain consistency. The grant of bail is not a mechanical act. Merely because some of the co-accused, whom similar role has been ascribed, has been released on bail earlier and State has not moved the higher Court against the order in question for cancellation, the power of the Court cannot be fettered to act against conscience.

12. On perusal of the bail order dated 13.7.2015 in respect of co-accused Pradeep Kumar Pattanayak passed in BLAPL No. 25613 of 2014, it indicates that the Hon"ble Judge has mainly taken the following aspects into consideration:--

"(i) After submission of charge sheet, about five months have elapsed. The Investigating Agency has not shown any important materials showing further involvement of the present petitioner in the matter of criminal conspiracy as well as money trail that has been unearthed during the said period of five months.

(ii) There is no apprehension that petitioner may flee from course of justice.

(iii) Witnesses cited in the charge sheet are to adduce evidence against the petitioner that he was operating the accounts of Nava Diganta Projects Limited in Allahabad Bank and some of the amounts were drawn by the petitioner from such accounts through self cheques, that he was one of the key persons of Nava Diganta Group of Companies and he along with other Directors collected huge deposits from the public alluring the depositors of high returns. All these are based on documentary evidence.

(iv) Though it is asserted that the petitioner is suffering from chronic diabetic with cardiac problem, much importance is not given to the health condition of the petitioner while considering the bail application."

13. The learned counsel for the CBI has produced some documents in a sealed cover regarding collection of further materials against the petitioner after submission of first charge sheet on 19.2.2015. It would not be proper to discuss in detail about such materials which may hamper the course of further investigation but in essence, it indicates that the account of Nava Diganta Capital

Services Ltd. was opened in a Bank and the petitioner and another director of the company were operating the said account and self cheques were presented under joint signatures of the petitioner and the other director and huge cash was withdrawn. The statements collected during further investigation indicate about the issuance of bond/certificate on behalf of Nava Diganta Capital Services Ltd. to the investors/depositors under the signatures of the petitioner and others. The debit vouchers in respect of Nava Diganta Projects Ltd. maintained in a bank as mentioned in the scrutiny report indicates that on number of occasions, the petitioner has received huge amount from the accounts of the company. The learned counsel for the CBI also produced some debenture certificates which bear the signatures of the petitioner as director of Nava Diganta Capital Services Ltd. The learned counsel for the CBI also placed the search list of the residential premises of the petitioner which indicates inter alia about the seizure of Rs. 28,00,000/- (twenty eight lakhs) in a black colour safari briefcase on 31.07.2014. The learned counsel for the CBI also placed the interrogation report of the petitioner in the sealed cover.

14. On going through the materials collected till submission of first charge sheet on 19.02.2015 and important materials collected during course of further investigation, it prima facie establishes money trailing from the accounts of Nava Diganta group of companies to the petitioner as well as involvement of the petitioner in the matter of criminal conspiracy. The co-accused Pradeep Kumar Pattnayak was a practicing lawyer as noted in his bail order whereas the petitioner is a Member of Parliament representing the Mayurbhanj Parliament constituency and therefore it can be said that the petitioner is not only a political person but much more influential person than the co-accused who has been released on bail. The fact that like the co-accused, the petitioner may not abscond is not by itself sufficient to claim parity and to induce the Court to grant him bail in a case of this nature. The Court is concerned with the liberty of the accused and also with safeguarding the course of justice. Not only documentary evidence but also ocular testimonies are to be adduced to substantiate the allegations against the petitioner.

Considering the submissions made by the respective parties and perusing the materials available on record as well as important materials collected during course of further investigation against the petitioner, I am of the view that the petitioner stands in a different footing than co-accused Pradeep Kumar Pattnayak who has been enlarged on bail and the case of the petitioner is distinguishable from the co-accused and as such the contention of the learned counsel for the petitioner regarding claim of parity and equity is not acceptable and accordingly the same is rejected.

15. Bail is granted on the totality of facts and circumstances of a case. Parity cannot be a sole ground but is one of the grounds for consideration of the question of bail. The principle of grant of bail on parity cannot be allowed to be carried to an absurd or illogical conclusion so as to put a Judge in tight and strait

jacket to grant bail automatically. There may be cases where a Judge may not simply take a different view from the Judge who granted bail earlier to a co-accused but there may be exception where the conscience of the Judge revolts in granting bail, in such a situation the Judge may choose to depart from the rule of parity by recording his reasons.

16. Even though the petitioner had resigned from the company on 20.5.2013 presumably foreseeing the adverse winds but that is not very much material for consideration of his bail application as he was one of the active Directors of all the four companies of Nava Diganta groups in between 2011 to 2013 and a key person in the management of the said companies and all the illegalities were alleged to have been committed during that period.

Non-mention of name of the petitioner either in the FIR lodged at Nayapalli Police Station on 27.05.2014 or in the FIR lodged by CBI on 26.06.2014 cannot be a ground to doubt the prosecution case at this stage or exonerate the petitioner from the criminal liability brought on record. The stage of FIR was at the earliest when the law was set into motion and the involvement of the petitioner transpired during course of investigation. When from other materials collected during investigation, the prosecution is able to make out a prima facie case against the petitioner, the omission of the name of the petitioner as an accused in the FIR loses significance. It is the settled legal proposition that FIR is not an encyclopedia of the entire prosecution case. It may not and need not contain all the details. Naming of the accused therein may be important but not naming of the accused in FIR may not be a ground to doubt the contents thereof, in case the statements of the witnesses are found to be trustworthy regarding the involvement of the accused. The Court has to determine after examining the entire factual scenario whether a person has participated in the crime or has been falsely implicated.

Even though both the FIRs were lodged against five persons including Binaya Kumar Baral and Hemant Kumar Sahoo but they were not charge-sheeted as no prima facie case was found against them. In the first charge sheet, it is mentioned that those two FIR named accused have no role in the business activity of the company and they have performed their duties like other employees of the company and accordingly it was not possible to attribute criminality on their part. Thus it cannot be said as contended by the learned counsel for the petitioner that right from the inception of the case, false allegations have been made against some persons. Non-submission of charge sheet against those two persons for the reasons assigned and also leaving two of the Nava Diganta group of companies from the charge sheet rather indicates fair, impartial and unbiased investigation by CBI.

The contention raised by the learned counsel for the petitioner that the petitioner was a mere signatory to the minutes of the meetings of the Board of Directors and a nominal Director is not acceptable. There are materials on record to indicate that the petitioner was carrying forward the day to day business of Nava

Diganta group of companies. He has also signed debenture certificates issued on behalf of the Company as a Director. He has also withdrawn substantial amount from the accounts of the Company by presenting self cheques. There has been monetary transaction from the Company's account to his personal account. In view of the active role played by the petitioner during the relevant period, the responsibilities fixed on him by the Company, the participation of the petitioner in the day to day affairs of the Companies coupled with the monetary transaction prima facie establishes that the petitioner was playing a crucial role in the functioning of the Companies.

The contentions of the learned counsel for the petitioner that not a single depositor has stated that he had deposited money in the Company on the assurance of the petitioner is not correct. The investors Smt. Sabita Dash (C.W.47), Ganesh Dash (C.W.48) and Smt. Urbashi Dash (C.W.49) have stated that being motivated with false promises of higher returns towards investment made in Nava Diganta Capital Services Limited by the petitioner and others and believing their versions on good faith, they invested money in the Company. The petitioner was a MLA at the relevant point of time and therefore it was natural on the part of the investors to give due weight on his versions and therefore the petitioner has played a key role in the unauthorized and illegal collection of money. It is said that the politicians promise to build bridges even when there are no rivers and when they offer something for nothing or something that sounds too good to be true, it is always worth taking a careful second look. The investors seems to have been swayed away by the promises made to double the invested amount within a year and when a political personality like the petitioner was one of the Directors of the Companies, they probably thought that their invested money would be fully secured. They did not give any second thought before investing their hard-earned money. They fell prey to the temptation of earning easy returns.

Even if the informant stated to have got refund of his invested money in the company as per his sworn affidavit before the learned Special C.J.M., C.B.I., Bhubaneswar and he is no more interested to proceed further with the case as claimed by the learned counsel for the petitioner but it does not in any way weakens the prosecution case. There are number of investors/depositors who have stated about the transaction and role of the petitioner in the affairs of the Company. There are also documentary evidence relating to such monetary investments. In the charge sheet, it is mentioned that the customer pending dues of the two companies is Rs. 8,39,01,580/- excluding the interest. Role of the informant is to set the criminal law into motion. Then it shifts to investigating agency and finally to the Court. Informant cannot be allowed to control the prosecution case though his role in the process of proper dispensation of justice cannot be sidelined. Merely because the informant is gained over by the accused persons or compromises the dispute with the accused in a case or turns hostile during trial, the prosecution case cannot fail, if there are other victims and the prosecution case is otherwise established. Informant cannot be given the remote

control of the prosecution and the prosecution cannot be allowed to dance to the tune of the informant. The contention raised by the learned counsel for the CBI that tampering with the evidence has already started cannot be ignored.

The contention raised by the learned counsel for the petitioner that investigating agencies have not investigated the matter properly and submitted the charge-sheet in a mechanical manner cannot be adjudicated at this stage particularly when nothing has been pointed out in that respect. A bald assertion that the investigation is perfunctory is very easy to make but very difficult to prove.

The argument advanced by the learned counsel for the petitioner that the petitioner is not involved in misappropriation of huge amount is ridiculous. The amount of Rs. 8,39,01,580/- (Eight Crores Thirty Nine Lakhs One Thousand Five Hundred Eighty) may not be that exorbitant for a political personality like the petitioner but such a figure is beyond the dreams of those thousands and thousands of common men who invested their hard-earned money falling prey to temptation and the designs of the promoters of the Companies.

The seizure of huge cash of Rs. 28,00,000/- in a briefcase on 31.07.2014 from the house of the petitioner during search though stated by the learned counsel for the petitioner was meant for election expenses but the learned counsel for the CBI submitted that the election of M.P. was over on 17.04.2014 and in view of the time gap between the date of election and seizure of money, CBI is also investigating whether the seized cash was meant for election expenses or has got any link with money trailing.

Whether local developmental works in Mayurbhanj district have been jeopardized or not and whether policy decisions in the educational institutions are affected or not because of the detention of the petitioner are not the criteria to grant bail to the petitioner particularly when there are no cogent materials on record to that effect. In spite of some difficulties which may arise in certain spheres because of the detention of the petitioner in view of his present status as a Member of Parliament, one cannot shut his eyes to the larger interest of public as well as State and the nature and seriousness of an economic offence and its impact on the society.

17. After bestowing my anxious, painstaking and careful consideration to the tactical and enthralling contentions raised at the Bar and on perusal of the case-laws cited, I am of the considered view that the collected oral and documentary evidence prima facie shows the involvement of the petitioner as one of the key conspirators in the chit fund scam case. The petitioner was one of the founder Directors of four Nava Diganta group of Companies which were never authorized by the Reserve Bank of India to collect deposits from the public. The investigation so far conducted suggests that the collection of money from the depositors was neither legally permissible nor were such collections/deposits invested in any meaningful business activity that could generate the high returns promised to the depositors. The petitioner and other Directors while issuing non-

convertible unsecured debentures of Nava Diganta Capital Services Ltd. seems to have not followed the guidelines of Reserve Bank of India and the provisions of the Companies Act were also flouted. From the materials collected so far, it prima facie appears that the petitioner was a key person in the management of the Nava Diganta group of Companies and huge amounts on different dates through self cheques under the signatures of the petitioner were withdrawn from the account of the Company and some of the bonds were also issued to the investors under the signatures of the petitioner as Director. There is also prima facie material to suggest money trailing to the petitioner's account from the accounts of the Company. The petitioner is a quite influential political person and Nava Diganta group of companies were formed while he was the MLA of Odisha Legislative Assembly from Saraskana Constituency and it seems the business of the Company flourished under the active patronage of the petitioner. At present the petitioner is a Member of Parliament wielding considerable clout and influence. It prima facie seems that interference with the course of justice has started by tampering with the evidence of the informant. The involvement of the petitioner in the deep rooted conspiracy in an economic offence involving huge loss of public fund is prima facie apparent.

William Shakespeare has said, " Never play with the feelings of others, because you may win the game but the risk is that you will surely lose the person for a life time." It seems that the petitioner taking advantage of his position in the society and political background has played with the feelings of the people; their trust and confidence on him and in the process, he had played with himself and surely lost those persons and also the game for the life time.

A Member of Legislative Assembly or a Parliamentarian has legislative power. Legislature is one of the four pillars of democracy. They are the symbols of people's trust. One wrong step taken by them can shake the confidence of the people. When an MLA or a Parliamentarian indulges himself in swallowing Public money and act against the solemn oath, he is definitely approaching towards his doomsday. He will not only be answerable to the Almighty but also to the 1.28 billion people of this country.

Without detailed examination of evidence and elaborate discussions on merits of the case but considering the nature of accusation, the nature of supporting evidence, the severity of punishment in case of conviction, reasonable apprehension of tampering with the evidence and availability of prima facie materials against the petitioner regarding his involvement in the commission of offences, I am of the view that even if the co-accused has been released on bail but taking into account the fact that further investigation of the case is under progress to unearth further evidence and other aspects of criminal conspiracy and money trailing and when the offence involved misappropriation of huge amount of public money, it would not be proper at this stage to release the petitioner on bail.

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