

(2024) 02 OHC CK 0103

In the Orissa High Court

Case No : Bail Application No. 5503 Of 2022

Roshan @ Babloo Yadav @ Bablu Yadav Vs State Of Odisha ?

Date of Decision : 12-02-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 309, 439
Indian Penal Code, 1860 — Section 120B, 406, 420, 467, 468

Citation : (2024) 02 OHC CK 0103

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

Bench : Single Bench

Advocate : R.R. Singh, Sarthak Nayak

Final Decision : Allowed

Judgement

S.K. Sahoo, J

This is the third successive bail application of the petitioner Roshan @ Babloo Yadav @ Bablu Yadav in connection with CBI, Bhubaneswar F.I.R. No. RC0152009A0023 dated 30.09.2009 corresponding to SPE Case No. 01 of 2011 pending in the Court of learned Special C.J.M. (C.B.I.), Bhubaneswar in which charge sheet has been submitted against the petitioner for the offences under sections 420, 467, 468, read with section 120-B of the Indian Penal Code.

The bail application of the petitioner has been rejected by the learned Addl. Sessions Judge -cum- Special Judge, C.B.I. Court No.I, Bhubaneswar in BLAPL No.355 of 2022 vide order dated 08.03.2022.

The first bail application of the petitioner in BLAPL No. 2747 of 2019 was rejected as per order dated 24.06.2019 with the following observations:-

"After bestowing my anxious consideration to weigh and analyse the materials available on record with utmost care and caution, the nature and gravity of the accusation, the manner in which the unemployed persons were cheated with assurance of providing them job in the Railway Department, the punishment prescribed for the offences under which charge sheet has been submitted, prima facie availability of supporting materials to establish such accusation, the role

played by the petitioner in the entire episode, the impact of such offences on the society, the absconding of the petitioner for about eight years after submission of charge sheet against him, I am of the humble view that merely because some of the co-accused persons have been released on bail, the petitioner cannot claim parity with them.”

The petitioner again approached this Court for bail for the second time in BLAPL No.2293 of 2020 and while rejecting the application for bail as per order dated 15.01.2021, this Court made the following observations:-

“In view of the submission of the learned counsel for the respective parties and taking into account the materials available on record and the nature and gravity of accusation, while not inclining to release the petitioner on bail on merit, but taking into account the period of detention of the petitioner in judicial custody and the slow progress of the case so far and the fact that sixty four witnesses are yet to be examined, I direct the learned trial Court to expedite the trial and take all possible steps to proceed with the trial on day-to-day basis keeping in view section 309 of Cr.P.C. Since the learned trial Court is also dealing with other cases for which it may not be possible on its part to give more time to this particular case, the case should be taken up during a particular time slot on each day. If the defence counsel after cross-examining a prosecution witness for some time files a petition for time to defer the cross examination, the learned trial Court shall not grant adjournment by giving long dates without realizing the inconvenience likely to be faced by the witnesses in attending the Court again and again. The trial Court shall do well to conclude the trial within a period of one year from the date of receipt of the copy of this order, if there is no other impediment.”

The aforesaid order dated 15.01.2021 was confirmed by the Hon’ble Supreme Court vide order dated 11.12.2021 passed in Special Leave to Appeal (Crl.) No.9437 of 2021.

When the matter was taken up on 22.01.2024, Mr. R.R. Singh, learned counsel for the petitioner made a submission that in spite of the order dated 15.01.2021 passed in BLAPL No.2293 of 2020, in the trial Court, out of sixty six charge sheet witnesses, only nineteen witnesses have been examined so far and he had supplied the deposition copies of those witnesses to Mr. Sarthak Nayak, learned Special Public Prosecutor (C.B.I.), who also did not dispute the submission of the learned counsel for the petitioner regarding the numbers of witnesses examined in the trial Court. However, Mr. Nayak opposed the prayer for bail, mainly on the ground that the case is of the year 2009 and the petitioner with much difficulty was taken into judicial custody on 25.02.2019 and he was an absconder for about ten years. He took time on that day to go through the depositions of the witnesses examined in the trial Court to verify what role has been attributed against the petitioner by the witnesses and to further verify if there is any criminal antecedent against the petitioner and also whether the address furnished by the petitioner in the cause title of the bail application is a correct

one or not.

Mr. Nayak, learned Special Public Prosecutor for the C.B.I contended that the witnesses examined so far in the trial Court have implicated the petitioner and moreover, there are number of other material witnesses yet to be examined in the trial Court who have also implicated the petitioner in the crime in question and once the petitioner is enlarged on bail, there is every likelihood of not only tampering with the evidence but also in view of his previous conduct, there is chance of absconding, in the event of which the trial of the case would be further delayed and therefore, the petitioner should not be released on bail. He further argued that charge sheet submitted against the petitioner and the co-accused persons indicates that they formed a gang, operated in Siliguri with sinister design to entrap unsuspecting candidates holding them out with a promise to provide jobs in Railways and in return, extracted money from them. To spread their clientele, they fanned out to different parts of the country including Odisha and the petitioner played a major key role. The petitioner and the co-accused Biswakanta Sharma purchased an internet domain in the year 2008 from the website "www.rrbguw.org" and "www.irrb.org" and used to enter the list of candidates from whom they had collected money and printed the internet result falsely showing the names of those candidates as successful candidates for a job in Railways and accordingly, cheated candidates mainly of Bihar, UP and Uttarakhand. Learned counsel submits that in Pithoragarh police station, Uttarakhand, similar complaint was made for which a case under sections 420 and 406 of the I.P.C. has been registered. All the privilege passes those were given to the affected candidates by the petitioner and the co-accused persons were found to be fake and not issued by the Railways Department and during interrogation of one co-accused, it came to light that the petitioner and another got the passes printed illegally. Learned counsel while not disputing the correctness of the address furnished by the petitioner in the cause title of the bail application, drew the attention of this Court to the first paragraph of order dated 24.06.2019 passed in BLAPL No.2747 of 2019 in which while dealing with the bail application of the petitioner, I have observed as follows:-

"Unemployment is a social misery. For an unemployed person, everyday becomes a day of hardship, curse, restlessness and uncertainty. One, who cheats such a person in such a situation giving false assurance of providing job and takes away his hard acquired money, is perhaps the worst creature on this earth and he does not deserve a place in this beautiful world created by God."

Mr. Nayak, learned Special Public Prosecutor contended that C.B.I. is taking every steps to examine the rest of the witnesses at an earliest and if the accused persons cooperate with the trial Court, there is every likelihood of early disposal of the trial.

Mr. Singh, learned counsel appearing for the petitioner placed reliance in the case of Sanjaya Chandra -Vrs.- C.B.I. reported in (2012) 1 Supreme Court Cases 40 wherein the Hon'ble Court held as follows:-

'21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

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39. Coming back to the facts of the present case, both the Courts have refused the request for grant of bail on two grounds: the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration."

Adverting to the contentions raised by the learned counsel for the respective parties, there is no dispute that the offences under which charge sheet has been submitted are triable by Magistrate. The maximum punishment prescribed for the offence under section 420 of I.P.C. is imprisonment for seven years and fine; for the offence under section 467 of I.P.C., the sentence of imprisonment is for life or imprisonment for ten years and fine; for the offence under section 468 of I.P.C., the imprisonment is for seven years and fine and for the offence under section 120-B of I.P.C., the punishment is in the same manner as abetment of such offence where there is no express provision is made in I.P.C. for the punishment of criminal conspiracy. The petitioner was taken into judicial custody on 25.02.2019 and he has already remained in custody for about five years and in

the trial Court, even though charge was framed against the petitioner and the co-accused persons on 16.08.2019 under sections 120-B/420/467/468 of I.P.C., but out of sixty six charge sheet witnesses, only nineteen witnesses have been examined so far. The petitioner was an absconder for about ten years, as contended by the learned Special Public Prosecutor, still then, when during the span of five years after the petitioner was taken into judicial custody, prosecution has examined only nineteen witnesses and in spite of the direction of this Court while rejecting the bail application of the petitioner for the second time in BLAPL No. 2293 of 2020 as per order dated 15.01.2021 to expedite the trial and to proceed with the trial on day to day basis keeping in view section 309 of Cr.P.C. and to take up the case during a particular time slot on each day and not to grant adjournments by giving long dates and to conclude the trial within a period of one year from the date of receipt of copy of the order, copy of which was sent to the learned trial Court on 20.01.2021 and after receipt of the copy, P.Ws.2 to 19 have been examined during the span of three years, in absence of any material that after such order was passed on 15.01.2021, the trial got delayed on account of the laches of the petitioner or that he did not cooperate with the trial Court for early disposal and since the progress of the trial is at a snail's pace, I am of the humble view that the petitioner is entitled to be released on bail subject to the conditions that he shall furnish bail bond of Rs. 5,00,000/- (rupees five lakhs) with two local solvent sureties each with further conditions that:

- (i) He shall not directly or indirectly make any inducement, threat or promise to any witness so as to dissuade him to disclose the facts of the case within his knowledge to the learned trial Court;
- (ii) He shall remain present before the learned trial Court on the date fixed for hearing of the case;
- (iii) He shall surrender his passport, if any (if not already surrendered) before the learned trial Court, and in case, he is not a holder of the same, he shall swear an affidavit to that effect. If he has already surrendered before any Court or investigating agency, the said fact should also be supported by an affidavit;
- (iv) He shall furnish his place of abode where he will be residing after his release on bail and also, disclose his phone numbers, whatsapp number and e-mail address to the Inspector of Police, CBI, ACB, Bhubaneswar;
- (v) Liberty is granted to the C.B.I. to make an appropriate application for modification/recalling the order passed today, if for any reason, the petitioner violates any of the conditions imposed by this Court.

The BLAPL is accordingly allowed.

Urgent certified copy of this order be granted on proper application.

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