(2024) 05 OHC CK 0057

In the Orissa High Court

Case No : Bail Application No. 14713 Of 2023

Santosh Mohuri @Santosh Mohanty @ Hadibandu APPELLANT

Vs

State Of Orissa RESPONDENT

Date of Decision : 01-05-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 419, 420, 465, 468
Contract Act, 1872 — Section 23

Citation : (2024) 05 OHC CK 0057

Hon'ble Judges : Sashikanta Mishra, J

Bench : Single Bench

Advocate : Y. Das, N.C. Mohanty, A.K. Pradhan, P. Ranjan, P. Dasmohapatra, P.M. Dasmohapatra & S.S. Sahoo, S.K. Mishra, B.P. Sarangi

Final Decision : Allowed

Judgement

Sashikanta Mishra, J.

1. The petitioner is in custody since 09.11.2023 in connection with Cyber Crime Economic Office P.S. No. 44 of 2023 corresponding to G.R. Case No. 932 of 2023 pending in the Court of learned J.M.F.C.-I, Cuttack for the alleged commission of offences under Sections 419/420/465/468 of IPC.

2. The prosecution case, as called out from the FIR, is that the informant used to visit one Chintamani Parida, also known as Hanuman Baba at his home in Trishulia everyday and used to meet several friends there. A stranger, namely Santosh Mohanty (Petitioner), purportedly acting at the instance of said Hanuman Baba identified himself as the Private Secretary to Union Minister, Dharmendra Pradhan and nephew of Ex-minister, Raghunath Mohanty. It is alleged that the petitioner convinced Hanuman Baba that he would arrange jobs in IOCL and Indian Railways for the children of his acquaintances. Accordingly, on the advice of Hanuman Baba, the informant along with others paid substantial amounts of money to the petitioner on different dates by bank transfer/UPI

transfer, on being assured of getting permanent jobs for their children. In the process a total amount of Rs.59,25,100/- was paid to Santosh Mohanty by the informants. Basing on such FIR, the aforementioned case was registered and investigation was taken up in course of which the petitioner was arrested.

3. Heard Mr. Yosobanta Das, Learned Senior Counsel assisted by Mr. N.C. Mohanty, learned counsel for the petitioner, Mr. S.K. Mishra, learned Addl. Standing Counsel for the State and Mr. B.P. Sarangi, learned counsel appearing for the informant.

4. Mr. Das, learned Senior Counsel would forcefully argue that allegations made in the FIR even if accepted on their face value cannot, be construed as a criminal offence in any manner. Moreover, on their own admission, the informants have entered into a void contract within the meaning of Section 23 of the Indian Contract Act, which is not enforceable in law. As such, the informants have foisted the case as a means of recovery of the amounts allegedly paid by them to the petitioner since they cannot approach the Civil Court. Mr. Das further submits that even otherwise, all necessary steps have been taken in the investigation including freezing of the bank accounts of the petitioner and therefore, he should no longer be detained in custody.

5. Mr. S.K. Mishra, learned State Counsel submits that there is clear proof that a total amount of Rs.59,25,100/- was transferred to the petitioner's bank account standing in the Axis bank from the accounts of seven informants. Though the said account and two others were frozen, yet the same contained only small sums, which implies that the petitioner has parked the ill-gotten money in some other place/bank.

6. Mr. B.P. Sarangi, learned counsel appearing for the informants vehemently opposes the prayer for bail by submitting that it is a clear case of cheating and fraud and therefore, a criminal offence. There being clear proof of transfer of huge amount of money from the accounts of the informants to the petitioner's account by itself proves the allegations. Since the informants were cheated on the bonafide belief of arranging employment for their children, no leniency should be shown to the petitioner.

7. I have heard the rival submissions and have also gone through the case record including the written instructions submitted by the I.O. to the State Counsel. There seems to be no dispute that huge amount of money, i.e. Rs.59,25,100/- was transferred by the informants to the bank account of the petitioner. Such transfer is said to be on the assurance given by the petitioner of arranging permanent jobs for their children. On the face of it, it seems a void contract or at any rate an illegal transaction as contended by learned Senior Counsel. There is considerable force in his contention that this would be an unenforceable contract. True, there are allegations also of cheating and impersonation but then when one considers the amounts transferred by the informants, the whole transaction appears to be suspicious. For instance, the

informant, Manimala Ghosh is said to have paid Rs.16,08,600/-, while informant Narendra Singh paid Rs.20,60,000/- to the petitioner. Other informants have also paid substantial amounts. Whether such huge amounts would be transferred by a prudent person on the mere asking or assurance of arranging permanent job in public sector undertaking is anybody’s is guess.

8. It is trite law that the criminal justice system cannot be utilized for recovery of money merely on the allegation of cheating and fraud etc. by the person paying the amount. In the case of Ramesh Kumar v. The State of NCT of Delhi, 2023 LIVELAW (SC) 496the Supreme Court noted the disquieting trend emerging over the years that judicial proceeding initiated by persons allegedly being victims of cheating are unwittingly being transformed into processes for recovery of the quantum of money. In view of what has been narrated hereinbefore, this Court is persuaded to hold that the FIR was lodged by the informants as a ruse for recovery of the amounts allegedly paid by them which otherwise they would not be able to do by invoking civil law.

9. Even otherwise, coming to the allegation of commission of the offences under Sections 419/420/465/468/ of IPC, all these offences are triable by Magistrate 1st Class. Investigation has progressed substantially and practically nothing further remains to be done. The petitioner has been in custody for nearly five months. The allegations can be proved during trial through evidence. Under such circumstances, continued detention of the petitioner in custody, particularly when there is no need for custodial interrogation would be unjustified.

10. Mr. Sarangi, learned counsel for the informants has further argued that even if this Court decides to grant bail to the petitioner, same should be with a rider of him making good the money taken by him in the form of depositing the same in the Court below at least without prejudice.

11. Learned State Counsel also makes similar submissions by adding that given the conduct of the petitioner and the recovery of several fake I.D. and documents from his possession, it is likely that he may not turn up to face trial. In response, Mr. Das, learned Senior Counsel, referring to the judgment of Supreme Court in the case of Dillip Singh v. State of Madhya Pradesh and Another, (2021) 2 SCC 779 submits that the criminal Court exercising jurisdiction is not expected to act as a recovery agent to realize the dues of the complainant and that too, without trial.

12. This Court finds that in Dillip Singh (supra), the Supreme Court observed as follows:-

“4. It is well settled by a plethora of decisions of this Court that criminal proceedings are not for realization of disputed dues. It is open to a court to grant or refuse the prayer for anticipatory bail, depending on the facts and circumstance of the particular case. The factors to be taken into consideration, while considering on application for bail are the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his ascendance; character, behavior and standing of the accused; and the circumstances which are peculiar or the accused and larger interest of the public or the State and similar other considerations. A criminal court, exercising jurisdiction to grant bail/anticipatory bail, is not expected to act as a recovery agent to realize the dues of the complainant, and that too, without any trial."

13. In view of the above observations, there is a lot of force in the arguments advanced by learned State Counsel. Nevertheless, the apprehension expressed by the State Counsel that the petitioner, if released on bail may flee from justice, is something that cannot be brushed aside lightly. Therefore, though not cash security yet, the petitioner, in the peculiar facts and circumstance of the case, must be bound down by other conditions so as to ensure his attendance during trial.

14. For the foregoing reasons therefore, I am inclined to allow the prayer for bail. The bail application is therefore allowed. Let the petitioner be released on such terms and conditions as the court below may deem and fit proper to impose including the following conditions:-

i. The petitioner shall furnish property surety of the value of Rs.60 lakhs to the satisfaction of the Court below.

ii. He shall not leave the territorial jurisdiction of the Court in seisin over the matter without seeking leave.

iii. He shall deposit his passport, if any, in the court below.

iv. He shall make himself available as and when required by the I.O.

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