

(2022) 09 OHC CK 0158

In the Orissa High Court

Case No : Anticipatory Bail Application No. 710 Of 2022

Suman Chattopadhyay

APPELLANT

Vs

Republic of India (C.B.I.)

RESPONDENT

Date of Decision : 20-09-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 57, 167
Indian Penal Code, 1860 — Section 120B, 406, 420
Prize Chits & Money Circulation Schemes (Banning) Act, 1978 — Section 4, 5, 6
Prevention of Money Laundering Act, 2002 — Section 44(1)(c)

Citation : (2022) 09 OHC CK 0158

Hon'ble Judges : S. Pujahari, J

Bench : Single Bench

Advocate : Devashis Panda, S. Panda, A. Mehta, D.K. Panda, R. Pathak, Sarthak Nayak

Final Decision : Disposed Of

Judgement

S.Pujahari, J

1. The Petitioner apprehending his arrest in CBI/EO-IV/Kolkata R.C. Case No.31(S) of 2014, corresponding to PMLA Case No.148 of 2019, pending in the file of the Designated PMLA Court, Bhubaneswar, registered for alleged commission of offences punishable under Sections 120-B/406/420 of I.P.C. and Sections 4, 5 & 6 of the Prize Chits & Money Circulation Schemes (Banning) Act, 1978, has filed this petition for his release on pre-arrest bail.

2. Heard Mr. Devashis Panda, learned counsel appearing for the Petitioner and Mr. Sarthak Nayak, learned counsel appearing for the Opposite Party-Republic of India (C.B.I.).

3. The Petitioner being indicted in the aforesaid case, which was transferred to the Court of PMLA Court, in view of the provision contained in Section 44(1)(c) of the Prevention of Money Laundering Act, 2002 (for short "PMLA Act"), has moved

this Court for pre-arrest bail.

4. This Court on taking into account the facts and circumstances in details had passed a speaking order on 17.06.2021 rejecting the prayer for pre-arrest bail of the Petitioner in ABLAPL No.8511 of 2020. However, the Petitioner moved the Apex Court by filing Special Leave to Appeal (Crl.) No.6738 of 2021 and the Apex Court while not interfering with the order dated 17th June, 2021 of this Court passed in ABLAPL No.8511 of 2020, have been please do pass the following order:-

"Mr. K.M. Natraj, learned Additional Solicitor General appearing for the Enforcement Directorate (Prosecuting Agency), on instruction, states that as regards crime registered as PMLA No.148/2019 on the file of Special Court under the Prevention of Money Laundering Act, 2002, the custodial interrogation of the petitioner is not required as of now; and as and when the petitioner is required for the purpose of interrogation or recording of his further statement, 48 hours advance notice will be served upon him. In that case, it will be open to the petitioner to take recourse to appropriate remedy, if so advised.

All contentions available to both sides are left open.

The petitioner has since been advised to pursue anticipatory bail in respect of CBI case registered against him, it will be open to the petitioner to do so before an appropriate forum.

In case, the CBI which is otherwise not concerned with the case registered by the Enforcement Directorate, intends to proceed against the petitioner in connection with the "PMLA Case No.148/2019" must also give 48 hours advance notice to the petitioner in that regard;

The special leave petition is disposed of accordingly.

Pending applications, if any, stand disposed of."

5. In view of the liberty granted by the Apex Court vide the order quoted above, the petitioner has again approached this Court seeking pre-arrest bail, after receipt of 'notice' of 48 hours from the C.B.I. for custodial interrogation. It may be mentioned here that pending disposal of the petition, interim protection has been granted to the petitioner by this Court, and the same is continuing till date.

6. Mr. Devashis Panda, learned counsel appearing for the petitioner, submits that the very initiation of the proceeding against Saradha Group Companies in Odisha is misconceived, inasmuch as the aforesaid alleged ponzi firm business having interest for ramification, the case was required to be investigated by the police in PMLA case and, accordingly, a case was registered against Saradha Group of Companies at the earliest point of time at Kolkata. All the F.I.Rs. pending here should have been transferred to the court having local jurisdiction over the place where the first offence was committed. However, without doing the same, the C.B.I. proceeded in different cases registered in different jurisdiction, which were

transferred pursuant to the direction of the Apex Court. One case was admittedly registered before the Court at Kolkata wherein the petitioner had business transaction with Saradha Group of Companies through his company, namely, Disha Productions & Multimedia Pvt. Ltd., but it was neither prosecuted there for the scheduled offence nor any case under the PMLA arising out of the same transaction, if any, was initiated. But, subsequent to the same, when the petitioner was in custody in connection with the case involving one Ponzi company, namely, "I-Core E-Services Ltd.", this case was investigated by the C.B.I. contrary to the provisions of the Code of Criminal Procedure, and the petitioner for the self-same transaction was taken to custody while he was in custody, notionally and his remand was sought for before the learned Special C.J.M.(CBI), Bhubaneswar where the case records were pending. In the meanwhile as the said case was transferred to the PMLA Court on the prayer of the C.B.I. in view of the mandate of Section 44(1)(c) of the PMLA Act and the said Court thereafter having become functus officio declined to remand the petitioner to custody. Then the petitioner came and challenged before this Court the action of the C.B.I. in taking him to custody, and this Court in CRLMC No.1618 of 2019 declared such arrest of the petitioner to be otiose, and at the same time gave liberty to the C.B.I. to seek remand of the petitioner before the appropriate Court where the case was pending, if so desired. Pursuant to the said order, though production warrant was issued, but due to release of the petitioner on bail in the I-Core E-Services Ltd. case pursuant to the order of the Apex Court due to his ill-health, the said production warrant could not be acted upon. Thereafter, the petitioner being harassed by the C.B.I. had approached this Court for his release on pre-arrest bail. This Court vide judgment dated 17th June, 2021 passed in ABLAPL No.8511 of 2020 refused the prayer for pre-arrest bail of the petitioner. Vide order dated 14th August, 2020 passed in ABLAPL No.8511 of 2020 this Court had given specific direction to the petitioner to cooperate with the investigation and allow the C.B.I. to interrogate, and the C.B.I. was directed not to take any coercive steps against the petitioner. However, this Court after having heard the learned counsel for the parties rejected the prayer for pre-arrest bail of the petitioner on merit. Petitioner challenged the same before the Apex Court by filing Special leave Petition to Appeal (Crl.) No.6738 of 2021, wherein the petitioner had taken health ground to be one of the grounds for his release on pre-arrest bail besides other grounds, and at the instance of the Apex Court the petitioner was examined by the All India Institute of Medical Sciences wherein he was diagnosed with serious ailments. In so far as the PMLA case is concerned, since on the date of hearing, the learned counsel for the Enforcement Directorate submitted that as of now, custodial interrogation of the petitioner is not required, the Apex Court directed the Enforcement Directorate to give 48 hours notice to the petitioner, if his custodial interrogation was required, and liberty was also given to the petitioner to take recourse of appropriate remedy in that event. As regards the scheduled offence, the Apex Court without expressing any opinion on the merit of the order passed by this Court and keeping in view the submission that the petitioner's interrogation is not required in any scheduled

offence, gave liberty to the C.B.I. to give 48 hours notice and in that event, the petitioner shall approach the appropriate authority for anticipatory bail. The petitioner after being given 48 hours notice by the C.B.I., has approached this Court.

7. It is also submitted by Mr. Panda, learned counsel appearing for the petitioner that the very inception of the case against Saradha Group of Companies being contrary to the mandate of Criminal Procedure Code, coupled with the fact that the petitioner for the self-same transaction having not been taken to custody in the case instituted at Kolkata, which was for the scheduled offence committed, the running of the C.B.I. after the petitioner is nothing but an indulgence of witch hunting to harass the petitioner. He also reiterated his earlier submission that the interrogation of the petitioner can also be effectively made without taking him to custody in view of the law laid down by the Apex Court in the case of Gurbaksh Singh Sibbia and others vrs. State of Punjab, reported in (1980) 2 SCC 565. As such, a custodial interrogation is much more fruitful as held in the case of P. Chidambaram vrs. Directorate of Enforcement, reported in (2019) 9 SCC 165 should not weigh in the mind of this Court while considering the prayer for pre-arrest bail of the petitioner afresh, more particularly, in view of the law laid down by the Apex Court in the case of Sushila Aggarwal vrs. State (NCT of Delhi), reported in (2020) 5 SCC 1, which has taken note of Gurbaksh Singh Sibbia (supra), especially when the petitioner is ready and willing to cooperate with the investigation, and his health condition is bad, for which, he was earlier released on bail in another case. It is his further submission that in respect of the scheduled offence though a PMLA case is pending here, the petitioner was not arrayed as accused therein and that a different PMLA case having been registered against him in respect of the same transaction at PMLA Court at Kolkata he has already been allowed to be released on bail in that case and in the meanwhile, and in another case against I-Core E-Services Ltd. The petitioner being allegedly involved in similar type of transaction, has also been granted bail.

8. Mr. Sarthak Nayak, learned counsel appearing for the C.B.I. would submit that this Court on taking into consideration all the aspects including the jurisdiction aspect, has already refused the prayer for pre-arrest bail of the petitioner, and in the meanwhile, further materials have emerged incriminating the petitioner and, as such, the petitioner has no case for pre-arrest bail, inasmuch as the custodial interrogation of the petitioner would further throw light on the larger angle of conspiracy. It is, therefore, his submission that although the petitioner being given liberty by the Apex Court has again approached this Court to ventilate his grievance in the aftermath of receipt of 48 hours notice from the C.B.I., no case is made out by him to seek pre-arrest bail, and there is no reason for this Court to review its earlier order of refusal. He would further submit that there being no new circumstance or mitigating factors in favour of the petitioner, the present second application for the very same relief is not maintainable.

9. It being an indisputable fact that the C.B.I. has issued 48 hours notice to the

petitioner for the purpose of custodial interrogation in connection with the scheduled offences, and the petitioner having approached this Court thereafter, keeping in view the liberty given to him by the Apex Court, the learned counsel for the C.B.I. cannot be heard of saying that the prayer of the petitioner for pre-arrest bail for the second time is not maintainable.

10. It appears that this Court addressing all the contentions of the petitioner had earlier rejected his prayer for pre-arrest bail. No doubt, in view of the liberty given the petitioner has made fresh prayer for pre-arrest bail on the grounds indicated earlier, giving much emphasis on the fact that another PMLA case registered as an off-shoot of similar scheduled offence registered in Kolkata against Ponzi Firm - Saradha Group of Companies wherein the petitioner has been indicted, has already been released on bail. Release of the petitioner in the PMLA case registered therein at Kolkata also cannot be a ground to release him on pre-arrest bail in the scheduled offence, more particularly when the said PMLA case is an off-shoot of the scheduled offence registered against Saradha Group of Companies at Kolkata. The other contention is that the petitioner could not have been proceeded in this case at Bhubaneswar, inasmuch as all the cause of action had arisen there at Kolkata and in all fairness of things, if at all he committed any offence he should have been proceeded in the case registered against Saradha Group of Companies registered at Kolkata, wherein though the petitioner was interrogated but not proceeded with. Therefore, the custodial interrogation of the petitioner in the present case is nothing but to indict the petitioner to harass him, without any fresh materials on record. Hence, the counsel for the petitioner has sought for pre-arrest bail. The aforesaid aspect has also been addressed in the earlier prayer for pre-arrest bail though not in detail. The registration of many cases for similar offences committed against different persons during the course of similar transaction in different jurisdiction, can hardly be a ground to allow the petitioner to be released on pre-arrest bail, more particularly when the petitioner has not been arrayed as an accused in the case in other jurisdiction and allowed to be released on bail. The petitioner, however, may challenge the same, if so advised, in the appropriate forum. The C.B.I. has already emphasized for custodial interrogation of the petitioner and taking note of the same, this Court on earlier occasion had rejected his prayer for pre-arrest bail. For the aforesaid reasons and there being no change in circumstance, this Court is not inclined to release the petitioner on pre-arrest bail, notwithstanding the liberty granted to him to re-agitate the matter by the Apex Court in the order quoted supra.

11. However, at the same time, it is directed that the petitioner shall appear before the C.B.I. in compliance to the notice given pursuant to the direction of the Apex Court, which led him to file this application for pre-arrest bail, for the purpose of interrogation not later than 6 p.m. of next Friday, i.e., 23rd September, 2022, and if the interrogation of the petitioner is not concluded within 24 hours from such appearance and C.B.I. feels his further custody is necessary, it must follow the provisions under Sections 57 and 167 of Cr.P.C. and

produce the petitioner before the jurisdictional Magistrate / Court at Bhubaneswar, i.e., the place where the aforesaid case is pending, and if required, on taking the petitioner on transit remand from the place where he is taken to custody, if required under law. If the petitioner upon being produced before the jurisdictional Court makes a prayer for bail and the C.B.I. simultaneously requires further custody of the petitioner for interrogation, the Court concerned must first decide the prayer for C.B.I. for remand, and if the same is refused, immediately thereafter the prayer for bail of the petitioner shall be considered in course of the same day.

12. It is further directed that while addressing the question of remand or the relevant aspects including the fact that the petitioner was earlier in custody of CBI subjected to interrogation, while dealing with the question of requirement of further custodial interrogation shall be looked into and a reasoned order be passed by the Court concerned. If the prayer for remand order is refused, the bail application, if any, filed by the petitioner shall be considered in the light of the law laid down by the Apex Court in the case *Satender Kumar Antil v. Central Bureau of Investigation & Anr.* (Miscellaneous Application No.1849 of 2021 in Special Leave Petition (Crl.) No.5191 of 2021). The Court shall also take into account the factual aspects that no flight risk is involved, inasmuch as though the petitioner had been released on bail in a similar case preceding the present case, there is no allegation against him regarding misuse of that liberty and release of co-accused, if any, in proper perspective.

13. With the aforesaid order, this ABLAPL stands disposed of.

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

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