(2023) 12 OHC CK 0092

In the Orissa High Court

Case No : Anticipatory Bail Application No. 8506 of 2023

Uttam Kumar Panigrahi And Anr APPELLANT

Vs

State Of Odisha RESPONDENT

Date of Decision : 13-12-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 34, 379, 406, 420, 465, 506

Citation : (2023) 12 OHC CK 0092

Hon'ble Judges : Sashikanta Mishra, J

Bench : Single Bench

Advocate : S.K. Mishra, J. Pradhan, P.S. Mohanty, S. Panigrahi, Sitikanta Mishra, S. Mohapatra, P.K. Panda

Final Decision : Allowed

Judgement

Sashikanta Mishra, J

1. The petitioners are apprehending arrest in connection with Golanthara P.S. Case No. 359 of 2023 corresponding to G.R. Case No. 1210 of 2023 pending in the Court of learned J.M.F.C.(R) (Cog.), Berhampur for the alleged commission of offence under Sections 379/406/420/465/506/34 of IPC.

2. Heard Mr. S.K. Mishra, learned Senior Counsel assisted by Mr. J. Pradhan, learned counsel appearing for the petitioners; Mr. Sitikanta, learned Addl. Standing Counsel for the State; and Mr. S.N. Mohapatra, learned counsel for the informant-opposite party No.2.

3. The prosecution case, briefly stated is, an FIR was lodged by one G. Deepak Rao, Secretary, Saankhya Educational Society on 24.07.2023 before Golanthara Police Station, Berhampur making several allegations of cheating, forgery, misappropriation and criminal breach of trust against the petitioners. It was specifically alleged that Saankhya Educational Society had a technical educational institution in the name and style of "Rahul Institute of Engineering and

Technology" (RIET) at Tatadapalli in the district of Ganjam being managed by it till 2014. Because of certain difficulties in the management and on approach by petitioner No.1, who is the Chairman of Gayatri Group of Institutions, the management of RIET was handed over to him by virtue of a Memorandum of Understanding-cum-Agreement (MOU) dated 21.05.2014. As per the terms and conditions of the MOU, the petitioners were liable to clear the loan liability of RIET from out of the income derived from the institution. However, the petitioners, though collected funds from the students and received sanctions/ grants from the Government but instead of clearing the outstanding dues, they deliberately defaulted in repayment of loan and also diverted the amounts to other educational institutions run by them. They also changed the name of RIET to Gayatri Institute of Engineering and Technology (GIET) and also changed the bank accounts accordingly. Because of the default in repayment of loan, the properties offered as collateral security by the informant and others were auctioned by the bank. The bank has also taken steps to auction the properties of RIET by serving final notice. However, the petitioners have shifted all the laboratory and workshop equipments to their own institution to avoid the process of auction by the bank.

4. Mr. S.K. Mishra, learned Senior Counsel would argue that firstly, as per the MOU, the entire management was entrusted to the petitioners and therefore, it is their right to deal with the funds of the institution in a manner considered by them to be beneficial for the institution. However, because of genuine difficulties, the loan amounts could not be repaid in time and the bank took action under the SARFAESI Act illegally. Nevertheless, the petitioners have deposited Rs.2.98 crores towards loan liability. Further, challenging the action of the bank, a proceeding is pending before the Debts Recovery Tribunal at Cuttack. The informant is apparently aggrieved because of action taken by the bank in respect of the properties offered as collateral security for the loan and a purely contractual dispute has been attempted to be given a criminal colour only to harass the petitioners. Mr. Mishra further submits that both the petitioners are respectable persons having their own group of educational institutions and therefore, if they are arrested in connection this case, it would result in gross humiliation and lowering of their prestige in the society. Mr. Mishra adds that the petitioners are always ready and willing to cooperate with the investigation as and when required.

5. Per contra, Mr. Sitikanta Mishra, learned State Counsel, while opposing the prayer for pre-arrest bail argues that there is clear evidence that the petitioners had acted for their own financial gains by utilizing the funds of the RIET by way of diversion. It is further argued that the petitioners have also illegally changed the name of the institution with an ulterior motive.

6. Mr. S. Mohapatra, learned counsel appearing for the informant-opposite party No.2 has argued that both the petitioners have acted fraudulently by manipulating documents and by shifting the equipments of the institution (RIET)

to their own institution to avoid their auction by the bank in violation of an order of status quo passed by the 2nd Additional Senior Civil Judge (Berhampur).

7. I have heard learned counsel for the parties at length and have gone through the materials on record including the affidavit filed by the informant- opposite party No.2 and the case diary. As it appears, the basic dispute between the parties appears to be non-payment of the loan dues of RIET and alleged changing of its name unilaterally by the petitioners. This is projected as a breach of the agreement (MOU) entered into between the parties back in the year 2014. A Civil Suit is said to be pending in this regard before the competent Court of law, in which, as already stated, an order of status quo has been passed. Though several allegations have been made regarding fraudulent conduct of the petitioners, yet the basic dispute appears to be contractual/civil in nature. It has not been disputed that the petitioner No.1 owns the group of educational institutions and petitioner No.2 is also a respectable person. It goes without saying that every breach of trust cannot be treated as a criminal act. Moreover, the dispute relating to breach of trust in the instant case is pending before the competent civil Court. Further, the question of default in repayment of loan is also the subject matter of proceeding initiated under the SARFAESI Act, which is presently subjudice before the Debts Recovery Tribunal. Some writ applications have also been filed by the parties before this Court and as per interim order being passed on 09.09.2016 in W.P.(C) No. 18438 of 2016 and W.P.(C) No. 14566 of 2016, the petitioners appear to have deposited Rs. 50 lakhs. The contention that the total amount of Rs.2.98 crores including the amount directed to be deposited by this Court, has been deposited by the petitioners has not been specifically disputed. It has not been specifically contended on behalf of the State that custodial interrogation of the petitioners is required. Though investigation is in progress, the petitioners can be directed to render full cooperation to the investigating agency without having to be detained in custody. In the considered view of this Court, this is a fit case where the petitioners can be extended the benefit of pre-arrest bail.

8. In the result, the ABLAPL is allowed. It is directed that in the event of arrest of the petitioners, they shall be released on bail by the arresting officer on such terms and conditions as he may deem fit and proper to impose including the condition that they shall render full cooperation in the investigation as and when required by the I.O., failing which it shall be open to the prosecution to move for cancellation of the bail.

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