Pradeep Kumar Rout Vs. State of Orissa

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Court : Orissa

Decided On : Aug-03-2007

Reported in : 2007(II)OLR452

Judge : M.M. Das, J.

Appellant : Pradeep Kumar Rout

Respondent : State of Orissa

Advocate for Pet/Ap. : Mr. Sarangi

Judgement :
ORDER

M.M. Das, J.

1. Several Vigilance Cases have been instituted against the present petitioner. Allegations in all the cases, except one, are for commission of alleged offence punishable under Sections 120B/420/467/468/472 IPC read with Section 13(2) and 13(i)(d) of the Prevention of Corruption Act, 1988.

2. The prosecution alleges that the then Managing Director of Orissa Rural Housing Development Corporation (for short, 'the Corporation') in conspiracy with the other subordinate officials of the said Corporation and private builders sanctioned and disbursed loan amounting to crores of rupees by bifurcating the

said money into small individual loans limited to Rs. 5,00,000/-. It is further alleged that in such method, as the money, which is meant for the rural poor people, was advanced to private builders who have also admittedly become chronic defaulters in repaying the said loans and, as such, the Corporation has sustained huge loss. The petitioner was working as the Accounts Officer in the said Corporation. It has been alleged against him that he prepared the appraisal report in respect of individual loanees misrepresenting non-existent incomes of such loanees without verifying the genuineness of the documents and recommended their cases for sanction and disbursement of loans. The petitioner is admittedly a Chartered Accountant and was working in the Corporation in question since the year 1995.

The particulars of the aforementioned cases are as detailed below:

No. BLAPL No. Bhubaneswar Outstanding amountsVigilance Involved in FIRP.S. Case
No.

No. 6720/07 No. 56/30.12.06 Rs. 1,53,78,751/-(M/s. Biswal Construction Pvt. Ltd.)2 6721/07 No. 54/23.12.06 Rs. 81,49,505/-(M/s. Gajanan Prop. Dealer & Construction Pvt. Ltd.)3 6722/07 No. 57/30.12.06 Rs. 40,62,041/-(M/s. Bhimika Builders Pvt. Ltd.)4 6723/07 No. 49/22.12.06 Rs. 44,68,485/-(M/s. Rashmi Mass Construction Pvt. Ltd.)5 6724/07 No. 60/30.12.06 Rs. 1,57,19,963/-(M/s. Home Live
Housing)

In each of the above cases, the petitioner previously approached this Court under Section 438 Cr.P.C. for grant of anticipatory bail in BLAPL Nos. 679, 680, 681, 682 and 683 of 2007. By order dated 30.3.2007, this Court declined to grant anticipatory bail to the petitioner. The petitioner again approached this Court in BLAPL Nos. 3582, 3583, 3584, 3586 and 3587 of 2007 for grant of anticipatory bail. The said bail applications were disposed of by this Court by a common order dated 23.4.2007 observing, inter alia, that no anticipatory bail order can be granted as the same has been rejected once and further observing that in the event, the petitioner surrenders and moves for bail pursuant to the order passed in the earlier bail applications, the Court shall, as far as practicable, maintain parity. The learned Counsel for the petitioner in the said cases, later submitted that as the petitioner has been directed to surrender and move for bail, he may also be given permission to move the higher forum in the event his bail applications are rejected. Considering such submission, this Court further directed that the bail applications of the petitioner will be disposed of by the trial Court in the first hour so that in the event of rejection, the petitioner can move the higher forum on the same day. The records, if necessary, shall be transmitted to the higher forum at the cost of the petitioner. An application for modification of the above order was filed in each of the bail applications, on consideration of which, this Court on finding that the learned Counsel for the petitioner is not in a position to specify the date on which the petitioner intends to surrender directed that, the date of surrender shall be intimated to the learned Counsel for the Vigilance Department prior to surrendering so that the case diary can be made available to the concerned Court.

3. While disposing of the aforementioned bail applications filed under Section 438, Cr.P.C. on the earlier occasion, appreciating the question as to whether the petitioner is required to verify the documents accompanying the loan applications, this Court observed as follows:

Though it is submitted by the learned Counsel for the petitioner that the petitioner is not required to verify the documents accompanying the loan applications, in his statement recorded under Section 161 Cr.P.C, he has specifically stated that he was performing the duty of appraisal of loan files to assess the eligibility for sanction and disbursement of roan. This aspect of the duty of the petitioner had not been brought to the notice of the Court when earlier two applications filed by the petitioner were heard and disposed of. Since the petitioner was alleged to be a part of the process in sanctioning the loans and there was nothing on record to show that he was also required to look into the documents for the purpose of verification, anticipatory bail was granted in two cases. However, considering his own statement during interrogation that he was also required to process loan files and assess the eligibility for sanction and disbursement of loan, it can hardly be said that the petitioner has absolutely no role to play in verification of the documents accompanying the loan applications. xxx xxx xxx

4. It is no doubt true that in some of the other applications filed under Section 438, Cr.P.C. by the petitioner, where similar allegations were made, this Court has granted anticipatory bail to the petitioner. However, on rejection of the prayer for anticipatory bail of the petitioner in the aforementioned cases and the observation made that if the petitioner surrenders and moves for bail, the said bail application shall be disposed of during the first hour of the day, it is alleged by Mr. Mohapatra, learned Counsel for the Vigilance Department that the petitioner neither surrendered before the Court below nor cooperated with the investigation. Consequently, the prosecution moved the learned Special C.J.M., Bhubaneswar on 20.4.2007 for issuance of N.B.W. against the accused which was allowed. The said accused could not be apprehended and absconded. On 6.6.2007, the prosecution moved the Court below for issuance of proclamation and attachment under Sections 82 and 83 of the Cr.P.C. which was allowed. It was only then the accused surrendered on 26.6.2007. Mr. Mohapatra vehemently argued that even previously when the accused was granted interim protection by this Court for co-operating with the investigation, he did not do so and, as a matter of fact, refused to give his specimen handwritings and answered to the queries made by the Investigating Officer in an evasive manner and even refused to give answer to some of the said queries. He also submitted that after the petitioner surrendered, the learned Special C.J.M. remanded the petitioner to police custody for three days for interrogation. It has been candidly stated by Mr. Mohapatra that the then Managing Director of the Corporation, namely, Shri Vinod Kumar, IAS is also an accused in the cases under investigation along with the then F.A. and C.A.O. who has retired in the meantime. Mr. Mohapatra contended that the petitioner being the initiator of the loan files by determining the eligibility to sanction loan, can be considered to be the prime accused in the case. He further submitted that in the event the petitioner is released on bail there is every likelihood that he will abscond.

5. Mr. Sarangi, learned Counsel for the petitioner, on the contrary, submitted that pursuant to the orders passed by this Court in the previous bail applications, due to intervention of summer vacation, the petitioner surrendered after the reopening of the Courts. He also submitted that the petitioner is not the authority to grant loan. He was only to verify the documents and prepare the eligibility report basing

on the available documents. He further submitted that each of the eligibility reports prepared by the petitioner in connection with the aforementioned cases were endorsed with a remark of the petitioner that all the conditions are subject to fulfillment before sanction and release of the loan. He contended that even the petitioner has made an endorsement that the applicant be asked to submit one original I.T. return and copy of payment voucher for 'verification and report'.

6. Considering the allegations made against the petitioner and the submissions of Mr. Mohapatra, learned Counsel for the Vigilance Department as well as the learned Counsel for the petitioner, this Court is of the view that at this stage of the case, it would be inappropriate to appreciate/assess the merits of the allegations made against the petitioner which are to be gone into at the trial in the event a charge sheet is filed.

7. It has been submitted by Mr. Mohapatra that the other co-accused persons, namely, the then Managing Director as well as F.A. and C.A.O. of the Corporation have not been taken to custody as the cases are under investigation and they have fully cooperated with the Investigating Officer.

8. From the above submissions, it, therefore, appears that due to non-cooperation of the petitioner with the Investigating Officer, the prosecution has taken all necessary steps for forcing the petitioner to surrender before the Court below. Admittedly, the petitioner was remanded to police custody for interrogation for three days.

9. Mr. Mohapatra further submits that due to the offences committed by the petitioner along with other accused persons, the Corporation having sustained heavy financial loss, the petitioner is not entitled to be released on bail. He also submitted that the Supreme Court in the case of State represented by the C.B.I. v. Anil Sharma : 1997 CriLJ4414 has held that custodial interrogation is more effective and apprehensions about the conduct of the accused is important and, further, the availability of the accused for interrogation is not a ground to grant bail. With regard to economic offences, Mr. Mohapatra relied upon the decision in the case of Narinderjit Singh Sahni and Anr. v. Union of India and Ors. : AIR 2001 SC3810 . It also appears from the above decision of the Supreme Court that the

Supreme Court took note of the observation of the High Court in the impugned order that unless exceptional circumstances are brought to the notice of the Court which may defeat the proper investigation and fair trial, the Court will not decline bail to a person who is not accused of an offence punishable with death or imprisonment for life. In the present case, no such exceptional circumstances have been brought to the notice of this Court which may defeat proper investigation to decline bail to the applicant. On the above observation of the High Court, the Supreme Court held that the 'said observation are more germane while considering an application for post-arrest bail. Consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest.

(Emphasis supplied)

10. In the case of State v. Anil Sharma (supra), the Supreme Court while considering an appeal filed by the C.B.I., against the order passed under Section 438, Cr.P.C. accepting the contention advanced on behalf of the C.B.I. held that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438, Cr.P.C.

11. It is, therefore, clear that the Supreme Court was in seisin over an order passed by the High Court under Section 438 Cr.P.C. and categorically distinguishing the facts to be considered in an application under Section 438 Cr.P.C. and on an application under Section 439 Cr.P.C. filed as above. The instant applications are under Section 439 Cr.P.C. and, therefore, in my considered view, the observations and conclusions in the aforesaid decision will have no application to the facts of the present case.

12. In the case of Enforcement Officer, Ted. Bombay v. Bher Chand Tikaji Bora and Anr. (2000) 18 OCR (SC) 109, the Supreme Court was also considering the order of anticipatory bail granted by the Bombay High Court and relying upon the decision in the case of Dukhishyam Benupani, Assistant Director, Enforcement Directorate (FERA) v. Arun Kumar Bajoria (1998) SCC (Crl) 261 observed that the white collar criminal like the respondent against whom allegation is that he has violated the provisions of the Foreign Exchange Regulation Act, is a menace to the

society and, therefore, unless, he alleges and establishes in the materials that he is being unnecessarily harassed by the Investigating Agency, the Court would not be justified in invoking the jurisdiction under Section 438 Cr.P.C. and granting anticipatory bail. The Supreme Court further observed that 'in the facts and circumstances of the present case, in our considered opinion, the High Court was wholly unjustified in invoking the jurisdiction under Section 438 Cr.P.C. and granting anticipatory bail to the respondent'.

13. For the reasons already stated above, the aforementioned decisions rendered by the Supreme Court cannot also be made applicable to the facts of the present case, as firstly, that was a case for anticipatory bail which was under consideration of the Supreme Court and, secondly, the offence alleged to have been committed was under FERA, whereas the facts of the present case are totally different and these bail applications under Section 439 Cr.P.C. do not relate to grant of anticipatory bail.

14. In the case of Narinderjit Singh Sahni and Anr. (supra), the Supreme Court was dealing with a batch of writ petitions under Article 32 of the Constitution where infraction of Article 21 of the Constitution was alleged by the petitioner and the petitioner therein prayed for grant of an order for bail in the nature as prescribed under Section 438 Cr.P.C. Several other points were raised in the said case before the Supreme Court.

15. Considering the facts of the said case which related to several alleged offences, the Supreme Court while holding that the petition under Article 32 of the Constitution is maintainable, came to the conclusion that the petitioners are not entitled to any relief by reason of insufficiency of available materials on record as regards the issue of infraction Article 21.

In my considered view, the said decision is of no assistance to the learned Counsel for the Vigilance Department in the facts of the present case.

16. I have perused the materials available in the case diary produced by Mr. Mohapatra on the direction of this Court. From the statement of the accused Bijay Kumar Mohapatra, the then F.A. and C.A.O. of the Corporation recorded under

Section 161 Cr.P.C., it appears that the said B.K.Mohapatra, has categorically stated that as per Agenda in item No. 28 approved by the Board of Directors of the Corporation in their meeting held on 3.10.2004, it was resolved that the housing loan matters would be looked after by the Executive Director (Finance) and since there was no Executive Director (Finance), when said B.K.Mohapatra joined as F.A. and C.A.O. of the Corporation, he was to look after the housing loan matters. He has alleged in the statement that he was sidelined and not allowed to discharge his duties as above in the matter of sanction and disbursement of loans by the then Managing Director, Shri Vinod Kumar, IAS.

17. The F.I.Rs. in this case were lodged by the Deputy Superintendent of Police, Vigilance Cell before the Superintendent of Police, Vigilance, Bhubaneswar Division. It appears from the allegation made in the F.I.Rs. that it was alleged that the Managing Director in connivance with his subordinate public servants including the petitioner entered into a criminal conspiracy with each of the loanees and in furtherance of the same swindled away the amounts disbursed in favour of the loanees by ordinarily limiting each loan to a tune of Rs. 5,00,000/-which was the jurisdiction of the Managing Director and in this process, lakhs of rupees meant for rural poor were directed to be paid to urban builders jointly by the public servants of the Corporation by abusing their official position.

18. Considering the materials available in the case diary including the statement recorded under Section 161 Cr.P.C. of the above named Bijay Kumar Mohapatra, I am satisfied that there is no prima facie material with regard to allegation of the conspiracy between the Managing Director and the present petitioner. It also prima facie appears that the present petitioner could not have sanctioned or disbursed the loans if the same would not have been sanctioned by the Managing Director.

19. Considering the above materials and the fact that the petitioner is in custody since 26.6.2007 and has been interrogated for three days while in custody and further in similar other cases, the petitioner has been granted anticipatory bail, I do not find any reason as to why the petitioner should not be enlarged on bail with stringent conditions.

20. I, therefore, while allowing these applications, direct that the petitioner shall be released on bail on furnishing a bond of Rs. 50,000/- (Rupees fifty thousand) with two sureties each for the like amount to the satisfaction of the learned Special Chief Judicial Magistrate, (Vigilance), Bhubaneswar in Vigilance G.R.Case Nos. 56, 54, 57, 49 and 60 of 2006 arising out of Bhubaneswar Vigilance P.S.Case Nos. 56, 54, 57 and 49 and 60 of 2006 respectively subject to the following further conditions:

(1) The petitioner shall appear before the Investigating Officer for further interrogation/investigation, as and when required.

(2) If it is required by the I.O., the petitioner shall give his specimen hand writing to him for comparison with the disputed hand writings.

(3) While on bail, the petitioner shall not move out of the territory of Bhubaneswar city without giving prior intimation to the I.O. with regard to the place of visit. However, on no account, the petitioner shall go out of the territory of the State of Orissa.

(4) In the event, a charge sheet is filed, on receiving summons from the Court below, he shall appear before the said Court on each of the dates to which the case is posted.

Violation of any of the conditions imposed above shall entail cancellation of this bail order.

All the BLAPLs are accordingly disposed of.