



IN THE HIGH COURT OF ORISSA, CUTTACK

BLAPL No.541 of 2021, BLAPL No.542 of 2021
and BLAPL No.543 of 2021

Applications under section 439 of the Code of Criminal Procedure.

Uma Shankar Patro Petitioner

-Versus-

Republic of India Opposite Party

For petitioner - Mr. Ashok Kumar Parija
(in all BLAPLs): Senior Advocate

For Republic of India: - Mr. Sarthak Nayak
(in all BLAPLs) Special Public Prosecutor
(CBI)

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

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Date of Order: 16.08.2024
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S.K. SAHOO, J. The petitioner has filed these three bail applications under section 439 of Cr.P.C. i.e. BLAPL No.541 of 2021 in connection with T.R. No. 07 of 2021 arising out of Khurda Odisha CBI/SPE/ACB P.S. Case No.RC-07(A) of 2019-BBSR charge sheeted under section 120-B read with sections 409, 420, 471 of the Indian Penal Code and section 13(2) read with section



13(1)(d) of the Prevention of Corruption Act, 1988 (as amended in 2018); BLAPL No.542 of 2021 in connection with T.R. No. 06 of 2021 arising out of Khurda Odisha CBI/SPE/ACB P.S. Case No. RC-08(A) of 2019-BBSR charge sheeted under section 120-B read with sections 409, 420, 471 of the Indian Penal Code and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 (as amended in 2018) and BLAPL No.543 of 2021 in connection with T.R. No.05 of 2021 arising out of Khurda Odisha CBI/SPE/ACB P.S. Case No. RC-09(A) of 2019-BBSR charge sheeted under section 120-B read with sections 409, 420, 471 of the Indian Penal Code and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 (as amended in 2018), all pending in the Court of learned Addl. Sessions Judge -cum- Special Judge, CBI Court No. I, Bhubaneswar.

The applications of the petitioner for bail before the learned Addl. Sessions Judge -cum- Special Judge, CBI Court No.I, Bhubaneswar were rejected as per order dated 13.01.2021.

Since all the three bail applications arise out of similar accusation, similar offences and parties are same, with the consent of the learned counsel for the parties, they are heard analogously and disposed of by this common order.



Prosecution case in BLAPL No. 541 OF 2021:

2. The factual matrix of the case is that one Roop Lal Meena, Deputy General Manager, Regional Office, Union Bank of India, Bhubaneswar lodged a written complaint on 01.07.2019 before the Superintendent of Police, C.B.I., A.C.B., Bhubaneswar requesting therein to cause an enquiry into the matter relating to the alleged fraud perpetrated in the 27 housing loan accounts of Union Bank of India, Nayapalli Branch, Bhubaneswar (hereafter, "the Bank"). In the said complaint, it is alleged that the accused Bank officials, namely, Bhubaneswar Mohapatra, the then Chief Manager, Aswini Kumar Patra, the then Marketing Officer and Rajesh Kumar Patanga, the then Manager (Advance) entered into a criminal conspiracy with four accused private builders, 27 borrowers of housing loan and unknown bank officials/others in the year 2017 and in pursuance thereof, the accused Bank officials abused their respective official positions in the matter of processing/sanction/disbursal of alleged housing loans. It is further stated that under the said conspiracy, the accused borrowers/builder submitted false/fictitious documents/information including fake/fictitious ITRs, defective KYC documents/information and the same were dishonestly processed/accepted by the accused bank officials without any



verification in violation of the bank guidelines/procedure and they also accepted incomplete credit information/documentation and obtained plan/legal scrutiny/search report etc. and they released the entire loan amount to the accused builders (on behalf of the borrowers) without ensuring completion of construction of the houses (simplex/duplex at GDS-BN Heritage on Plots at Mouza-Koradkaanta, P.S.-Saheed Nagar, Bhubaneswar, Dist.-Khurda. It is further stated that the disbursed loan amounts were allegedly diverted by the accused builders for other purposes and have caused undue wrongful loss to the tune of Rs.13,98,62,852/- as on 31.05.2019 to the Bank. The said complaint was treated as first information report which was registered against the petitioner along with others under sections 420, 467, 468, 471, 120-B of the Indian Penal Code and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 (as amended in 2018).

After registration of the case, the C.B.I. commenced the investigation. During the course of investigation, it was revealed that during the year 2017, twenty seven housing loan application forms having signatures of twenty seven different borrowers on the respective forms along with other documents including copies of ITRs (signed/unsigned by the applicants),



were received by the Bank for purchase of land and construction of houses (simplex/duplex) thereon from the project "GDN-BN Heritage" of the petitioner, Shri Biswanath Jena and his family (sellers) at Koradakhanta, Bhubaneswar. Thereafter, loan amounts were sanctioned and disbursed against each of the twenty-seven applicants by the Bank.

The investigation further revealed that the petitioner and his wife Smt. Subhashree Patra were the Directors of the company, namely, M/s. GDS Builders Pvt. Ltd., Bhubaneswar and the project 'GDS-BN Heritage' is a housing project started by the builder M/s. GDS Builders Pvt. Ltd., being represented by the petitioner and the land owners Shri Biswanath Jena, his wife Late Kamala Rani Jena and his son Shri Aditya Kumar Jena as per the terms and conditions mutually agreed to by them vide development agreement made in the year 2009 for collaborative development of the land situated at Plot No.73, Khata No. 459/134, Koradakanta, Jagannath Nagar, Bhubaneswar measuring Ac.0.305 dec. and sub-plot no.11, plot no.74, Khata No. 435, Koradakanta, Bhubaneswar and measuring Ac.0.046 dec. belonging to M/s. GDS Builders Pvt. Ltd. and plot no.77, Khata No.292 at Jagannath Nagar, Koradakanta, Bhubaneswar and measuring around Ac.1.869 dec. belonging to Shri



Biswanath Jena and his family. Thereafter, during the year 2013, the piece of land situated in Plot Nos.73 & 74 (belonging to M/s. GDS Builders Pvt. Ltd.) was divided into five sub-plots and the piece of land in Plot No.77 (belonging to Shri Biswanath Jena) was divided into 38 sub-plots. The aforesaid sub-plots (total $05+38=43$) were subsequently registered in the names of Shri Biswanath Jena (04 sub-plots), Late Kamala Rani Jena (04 sub-plots), Shri Aditya Kumar Jena (03 sub-plots), the petitioner (18 sub-plots), Shri Ashwin Kumar Patro (cousin of the petitioner) (07 sub-plots), Smt. Rasmita Patro (w/o. Shri Ashwin Kumar Patro) (05 sub-plots), Shri Sandeep Kumar Patro (01 sub-plot) and Shri Sudam Subudhi (01 sub-plot) (both known persons to the petitioner) by way of registered sale deeds. Subsequently, 27 sub-plots out of the aforesaid sub-plots (i.e. the sub-plots in the names of the petitioner, Shri Biswanath Jena, his wife Late Kamala Jena and his son Shri Aditya Kumar Jena) were sold to the accused borrowers by way of sale deeds during 2017 and mortgaged to the Bank against the alleged housing loans. The investigation further revealed that the plots sold by Shri Biswanath Jena, his son, his wife as well as the petitioner in the present case were found to be marketable and having clear title.



The investigation further revealed that the documents like requisite application form, KYC (ID and/or address proofs) signed by the accused borrowers, notarized sale and/or construction agreements having seal and signature of Public Notary Shri Janamejaya Routray, duly signed by the borrower and builder/sellers of respective plots and affidavits of equitable mortgage etc. are held on record, but Shri Janamejaya Routray denied to have signed/notarized the said agreements, affidavits and claimed that his signatures/seal were forged.

The investigation further revealed that the copies of Income Tax Returns submitted by the accused borrowers with the loan application forms were found to be fake, which has been confirmed through the concerned Income Tax authorities. It was further revealed that all the borrowers had signed the original registered sale deed in respect of the alleged sub-plots registered in their names and mortgaged to the Bank as collateral security in the alleged loans. Thus, it was revealed that the borrowers were aware of the facts and their involvement in the alleged conspiracy of the builder with bank officials.

The investigation further uncovered that all the accused borrowers are the close associates or the relatives of such close associates of the petitioner. During the course of



investigation, the accused Ashwin Kumar Patra who is the cousin of the petitioner has confirmed that the accused borrowers are all workers/known persons/relatives or the relatives of known persons or workers, who are employed with GDS Builders Pvt. Ltd. and/or Dwaraka Jewelers (a partnership firm owned by the petitioner). It was also revealed that the borrowers who are all the employees of GDS Builders Pvt. Ltd. and/or Dwaraka Jewelers were not financially sound to pay such huge amount as margin money. The net-worth arrived in respect of the borrowers is not based on documents and hence, invalid as per the Bank's instructions. The investigation further revealed that as per the instant circular/instruction of the Bank, the disbursements from the loan accounts of the borrowers to the account of the builder/seller is to be done after obtaining the written consent of the borrower as well as the written request of the builder duly confirming the work completed till the date of request and enclosing bills/invoices.

The investigation further revealed that the project site 'GDS-BN Heritage' is still a vacant site without any constructions made thereon and the aforesaid post-sanction inspection reports compiled and signed by the accused Ashwini Kumar Patra are all invalid/false as the two storied building



structure mentioned in the said inspection reports is not found at the project site and that the construction work is not even commenced by the petitioner though 99% value of the sanctioned limits from the loan accounts of the accused borrowers were already disbursed by the Bank.

The investigation further unwrapped that out of twenty seven housing loans, Bank has disbursed full loan amounts of 14 housing loan accounts (in the names of different borrowers) to the bank account of the petitioner, who himself is the builder and promoter of the housing project 'GDS BN Heritage' as well as land/plot owner in the said 14 cases. Similarly, the Bank has also disbursed loan amounts with respect to the remaining 13 alleged housing loan accounts (in the names of different borrowers) to the bank accounts of Shri Biswanath Jena as well as to the bank accounts of Shri Aditya Kumar Jena and his wife Late Kamala Rani Jena. It was also revealed that Jena family were the sellers of plots and promoters of the said housing project for the said 13 cases. Hence, it was revealed that the said promoters (Jena family) had also received and benefitted to the tune of the margin money paid in cash by the accused borrowers in respect of the 13 plots sold by them, though the disbursed amount is totally paid back to the builder



i.e. the petitioner herein. It was also revealed that the Bank has carried out fresh valuation of the mortgaged properties during March 2020 and the total value of the said mortgaged properties was evaluated by the empanelled valuer of the Bank at Rs.5,25,13,560/-, which is much lower than the total dues outstanding in the alleged loan accounts.

The investigation further revealed that out of twenty seven loan accounts, two loan accounts have been closed by repaying the loan dues and thus, the Bank has suffered a wrongful loss of Rs.12,36,05,348/- (excluding applicable interest) in the alleged act of conspiracy and cheating with a corresponding wrongful gain to the accused persons. Accordingly, the Investigating Officer submitted charge sheet against the petitioner along with others for the offences as aforesaid.

Prosecution case in BLAPL No.542 of 2021:

3. The factual matrix of the case is that pursuant to the written complaint lodged by one Roop Lal Meena, Deputy General Manager, Regional Office, Union Bank of India, Bhubaneswar on 01.07.2019 before the Superintendent of Police, C.B.I., A.C.B., Bhubaneswar, the first information report was registered against the petitioner and others for commission of



offences under sections 420, 467, 468, 471 and 120-B of the Indian Penal Code and section 13(2) read with sections 13(1)(d) of the Prevention of Corruption Act, 1988.

After registration of the case, the C.B.I. commenced the investigation. In the said complaint, the complainant has stated that during the year 2017-18, the accused Bank Officers, namely, Bhubaneswar Mohapatra, the then Chief Manager, Rajesh Kumar Patanga, the then Manager (Advances) Aswini Kumar Patra, the then Marketing Officer and one private builder, namely, Uma Sankar Patro (the petitioner herein), Director of GDS Builders Pvt. Ltd., Bhubaneswar along with ten housing loan borrowers entered into a criminal conspiracy with each other and in furtherance to the said conspiracy among themselves, a total amount of Rs.5,00,20,019.74/- (along with interest upto 31.05.2019) of the Bank have been misappropriated by way of ten nos. of housing loans and one CC loan and the same has been fraudulently and illegally transferred to the bank accounts of the aforesaid builder. The said housing loans have been illegally processed and sanctioned by the aforesaid bank officers in the names of ten borrowers accepting fake/forged ITRs as income proofs and false credit information without any supporting documents and one CC loan is processed, sanctioned



in the name of the petitioner flouting the bank norms. The sanctioned loan amounts were disbursed to the aforesaid builder from the housing loan accounts of the aforesaid ten borrowers without their consent and also without ascertaining the progress of constructions made in the project site. It is further alleged that the disbursements were made flouting the banking norms merely on the basis of false inspection reports with an ulterior motive for the own benefits of the accused persons.

After registration of the F.I.R., the CBI took up investigation of the case. During investigation, it revealed that out of the ten alleged housing loans, the Bank has disbursed the loan amounts relating to purchase of land of five housing loan accounts (in the names of different borrowers) by way of Demand Drafts favouring Smt. Gita Rani Das who is the land/plot owner in those five cases. It was further revealed that an amount of Rs.32,72,000/- has been disbursed by the Bank in favour of Gita Rani Das by way of demand draft (DD) towards the land registered by her in the names of five accused borrowers. Similarly, Bank has also disbursed the loan amounts with respect to remaining five alleged housing loan accounts (in the names of different borrowers) to the bank account of the petitioner who himself is the builder as well as the land/plot



owner in those five cases. It was further revealed that Rs.4,38,00,900/- has been credited to the Bank account of the petitioner maintained with Federal Bank & Union Bank of India (CC account) on different dates from 13.11.2017 to 23.02.2018. During the course of investigation, the Bank carried out fresh valuation of the mortgaged properties during March 2020 and the total value of the said mortgaged properties was evaluated by the empanelled valuer of the Bank at Rs.2,74,92,480/- which is much lower than the total dues outstanding in the alleged loan accounts.

The investigation further revealed that, in a similar manner, one CC loan bearing the account no.523205010000335 was processed & recommended by Shri Rajesh Kumar Patanga, the then Manager (Advances), of the Bank for an amount of Rs.70,00,000/- in the individual name of the builder, the petitioner herein, on the basis of false information submitted by him. Shri Rajesh Kumar Patanga has accepted the false credit information & false statement of stocks/goods to process the CC loan. Further, Shri Patanga has not made any field visits to compile the necessary inspection reports about the business unit, the availability of stocks, verification of trade license, customer residence and office, properties offered as security etc.



Shri Patanga processed the CC loan flouting the prescribed rules and regulations of the Bank and recommended for sanction at the branch itself, instead of forwarding the proposal to ULP functioning in the same premises for necessary processing & sanction by the officers posted in ULP for such purpose. The said CC loan was also sanctioned by co-accused Bhubaneswar Mohapatra at the branch itself dishonestly accepting the false information/documents submitted by the borrower and relying on the recommendations of Shri Patanga. Both Shri Rajesh Kumar Patanga & Shri Bhubaneswar Mohapatra has further allowed the disbursement of Rs.69,00,000/- out of the total sanctioned CC loan amount Rs.70,00,000/- to unrelated/unauthorized parties (as per the Bank's loan policy) i.e., to the bank account of Smt. Subhasree Patro (spouse of the petitioner) and GDS Builders Pvt. Ltd. on the date of sanction itself. Some of the deviations of extant guidelines/ procedures on the part of Shri Bhubaneswar Mohapatra, the then Chief Manager, Shri Rajesh Kumar Patanga, the then Manager (Advances) both of UBI, Nayapalli branch while processing, sanctioning and disbursing the CC loans. Therefore, a total amount of Rs.5,42,10,000/- (i.e.Rs.4,72,10,000/- + Rs.70,00,000/-) has been misappropriated by the accused bank



officials in conspiracy with the aforesaid other accused persons by way of ten housing loans and one CC loan.

It was further revealed that Shri Bhubaneswar Mohapatra in the capacity of Chief Manager and Branch Head, Shri Rajesh Kumar Patanga in the capacity of Manager (Advances) and Shri Ashwini Kumar Patra in the capacity of Asst. Manager (Marketing), all of Nayapalli branch of the Bank has transgressed the delegated, sanction/loaning powers while processing, sanctioning and disbursement of loan amounts into the accounts of the builder (as per the Bank's circular no.307-2015 dated 08.12.2015, the sanction/loaning powers of the officers, posted in branches were ceased in respect of all kind of loan proposals involving mortgage of property). The investigation also revealed that the Bank officers Shri Bhubaneswar Mohapatra, Shri Rajesh Kumar Patanga and Shri Ashwini Kumar. Patra has deliberately disbursed all the amounts in the alleged loan accounts without ensuring the progress of construction (in respect of ten housing loans) in conspiracy with the accused builder (the petitioner herein) and the ten accused borrowers. Therefore, it can be construed that both the accused Bank officers' Shri Bhubaneswar Mohapatra, Shri Rajesh Kumar Patanga & Shri Ashwini Kumar Patra had committed criminal



breach of trust and also abused their respective official positions extending undue financial accommodation to the petitioner through housing loans in the names of different borrowers and CC loan in the individual name of the petitioner processed/sanctioned and disbursed on the basis of fake/fabricated documents/false information without proper due diligence and in gross violation of the extant rules and regulations of the Bank. The notarized sale and/or construction agreements (duly signed by the borrower and builder/sellers of respective plots) and affidavits of equitable mortgage etc. having seal and signature of Public Notary are claimed to be forged as stated by the public notary Shri Janamejaya Routray. As per the complaint given by the Bank, it has sustained a wrongful loss of Rs.5,00,20,019.74/- along with interest upto 31.05.2019. It was revealed during the course of investigation that the petitioner himself has made repayments of around Rs.90,61,618/- covering the monthly installments in respect of ten housing loan accounts of the accused borrowers by transferring money from the Bank accounts operated by his known persons/business firm in Bhubaneswar. Thus, the Bank has suffered a total wrongful loss of Rs.4,09,58,401.74/- (excluding applicable interest) in the alleged act of conspiracy and cheating, with a corresponding



wrongful gain to the accused persons. Therefore, the above acts of the accused bank officers Shri Bhubaneswar Mohapatra, Shri Rajesh Kumar Patanga & Shri Ashwini Kumar Patra, the petitioner along with his company M/s. GDS Builders Pvt. Ltd., the ten accused borrowers, namely Shri Dhaneswar Patuar Singh, Shri Sadasiva Jena, Shri Sangram Keshari Routray, Smt. Shantilata Behera, Shri Kedar Senapati, Shri Jintendra Mahakud, Shri Mahadev Baral, Shri Manas Kumar Sahoo, Shri Narendra Swain and Shri Jambeswar Sahoo constitute cognizable offences punishable U/s.120-B r/w 409, 420 & 471 IPC and Sec. 13(2) r/w. 13(1) (d) of the Prevention of Corruption Act, 1988 (as amended in 2018).

Prosecution case in BLAPL No.543 of 2021:

4. The factual matrix of the prosecution case pursuant to the written complaint lodged by one Roop Lal Meena, Deputy General Manager, Regional Office, Union Bank of India, Bhubaneswar on 01.07.2019 before the Superintendent of Police, C.B.I., A.C.B., Bhubaneswar, the first information report was registered against the petitioner and others for commission of offences under sections 420, 467, 468, 471 and 120-B of the Indian Penal Code and section 13(2) read with sections 13(1)(d) of the Prevention of Corruption Act, 1988 (as amended in 2018).



During the course of investigation, the informant stated that the Bank officials, namely, Bhubaneswar Mohapatra, the then Chief Manager, Aswini Kumar Patra, the then Marketing Officer and Rajesh Kumar Patanga, the then Manager (Advances) entered into a criminal conspiracy with three accused private builders, seven borrowers of housing loan and unknown bank officials and others in the year 2017 and in pursuance thereof, the bank officials abused their respective official positions in the matter of processing/sanction/disbursal of alleged housing loans. It is further alleged that under the said conspiracy, the accused borrowers/builder submitted false/fictitious documents/information including fake/fictitious ITRs, defective KYC documents/information and the same were dishonestly processed/accepted by the accused bank officials without any verification in violation of the bank guidelines/procedure and they also accepted incomplete credit information/documentation and obtained plan/legal scrutiny/search report etc. and they released the entire loan amount to the accused builders (on behalf of the borrowers) without ensuring completion of construction of the houses (BJB Nagar-02 & Jayadev Vihar-03 in Bhubaneswar reportedly sold by builders GDS Builders Pvt. Ltd., Surnag Builders Pvt. Ltd. and Mrs. Puspanjali Patro). The



prosecution further alleges that the disbursed loan amounts were allegedly diverted by the accused builders for other purposes and due to the aforesaid criminal act on the part of the accused persons, undue wrongful loss to the tune of Rs.5,19,16,340/- as on 31.05.2019 has been caused to the Bank.

Investigation revealed that Shri Bhubaneswar Mohapatra (Emp. ID/ PF ID No. 29.2331) was posted as Chief Manager & Branch Head in the Bank on 20.05.2016 and he worked there in the same capacity till 22.04.2018. Investigation further revealed that Shri Ashwini Kumar Patra was posted in the Bank as Assistant Manager (Marketing) on 30.12.2016, and he worked there in the same capacity till 05.11.2017. Thereafter, he was posted to the Union Loan Point (ULP) in the same capacity during the period from 06.11.2017 to 10.06.2018, which is functioning in the same premises. Investigation revealed that Shri Rajesh Kumar Patanga was functioning as Manager (Advance) of Nayapalli Branch, Union Bank of India during the period from 19.01.2016 to till date.

Investigation has further revealed that during the alleged period i.e., during the year 2017, seven housing loan application forms having signatures of seven different borrowers (on the respective forms), along with other documents including



copies of ITRs (signed by the applicants), were received by the bank for purchase of flats located at (i) flat No. 2 (Ninth Dream), Plot No. III, Khata No.154, in the "Ninth Empire" apartment at B.J.B. Nagar, Bhubaneswar (belonging to Smt. Pushpanjah Patro), (ii) flat no.1 (Ninth wonder), Plot No.III, Khata No.154, in the 'Ninth Empire' apartment at B.J.B. Nagar, Bhubaneswar (belonging to Smt. Ahuradha Patro, MD, Sunag Builders Pvt. Ltd.), (iii) Flat No.201, 202 & 301 (total 03 flats) located at B.K. Sastry Enclave, Plot No. 688/2877, Khata No. 453/1027, Unit-16, PS: New capital No.33, Jayadev Vihar, IRC Village, Bhubaneswar (belonging to 'GDS Builders Pvt. Ltd. & (iv) Flat No. A in 2nd floor & Flat no. A in 3rd floor (total 02 flats) located at Narayana Arcade, Plot No.64, Khata No. 66, Unit-7, P.S. New capital No.39, Surya Nagar, Bhubaneswar (belonging to GDS Builders Pvt. Ltd.). Thereafter, loans have been sanctioned to the aforesaid seven accused borrowers by Bhubaneswar Mohapatra in the capacity of Chief Manager & Branch Head. The same were duly processed by Shri Ashwini Kumar Patra (Assistant Manager, Marketing) instead of forwarding them to ULP for necessary processing & sanction. All the seven loans were processed, sanctioned & disbursed at the branch by the aforesaid two officials transgressing the delegated sanction powers.



Investigation further revealed that the petitioner is the Director of the company namely, M/s GDS Builders Pvt Ltd., Bhubaneswar having its registered office at Plot No.14/3734, Old Station Square, Cuttack-Puri Road, Near Bhubaneswar Hotel, Bhubaneswar and incorporated under ROC-Cuttack with CIN No. U452010R2008PTC009959 and at present the petitioner and his wife Smt. Subhasree Patro are the Directors of M/s GDS Builders Pvt Ltd., Bhubaneswar. It was further revealed that seven loans were raised in the names of different borrowers for purchasing the flats from him, his mother (Smt. Pushpanjali Patro) and his aunt (Smt. Anuradha Patro) respectively in the housing projects at BJB Nagar, Surya Nagar & Jayadev Vihar, Bhubaneswar. The properties sold by Smt. Pushpanjali Patro, Smt. Anuradha Patro as well as the petitioner in the instant case are found to be marketable and having clear title.

Investigation revealed that the documents like requisite application form, KYC (ID and/or address proofs) signed by accused borrowers, notarized sale and/or construction agreements having seal and signature of Public Notary Shri Janamejaya Routray, (duly signed by the borrower and builder/sellers of respective plots) and affidavits of equitable mortgage etc., are held on record. However, during the course of



investigation, Shri Janamejaya Routray has denied to have signed/notarized the said agreements/affidavits and claimed that his signatures/seal were forged. Hence, the voluntarily given specimen signatures/writings of Shri Janamejaya Routray, Shri Uma Sankar Patro, Shri Bhubaneswar Mohapatra and Shri Ashwini Kumar Patra were obtained and sent to GEQD along with the questioned documents for necessary examination and expert opinion. The expert opinion in this regard is awaited. It was further revealed that the alleged loans are processed on the basis of the value mentioned, in the sale and construction agreements (submitted by the accused borrowers) as proposed cost of housing project. No separate estimate from any empanelled engineer/valuer (as per bank guidelines) was obtained by the accused Bank officers' Shri Ashwini Kumar Patra at the time of processing the loan proposals and not even by Shri Bhubaneswar Mohapatra during sanction.

Investigation further revealed that the copies of Income Tax Returns submitted by the accused borrowers, namely, Shri Mithun Pradhan & Shri Ajay Kumar Parida along with the loan application forms are found to be fake and are not generated from Income Tax Department. It is pertinent to mention here that the ITRs as well as other documents



submitted by the other accused borrowers Shri Durga Prasad Das, Shri Malaya Kumar Das, Smt. Swapna Sikha, Shri Manoj Kumar Patra & Shri Una Satya Brata Patra are all found genuine during the course of investigation. The concerned Income Tax authorities have been examined who confirmed the use in the name of the aforesaid accused borrowers for processing the alleged loans by the Bank. Moreover, the borrowers had signed the original registered sale deeds in respect of the alleged sub-plots registered in their names and mortgaged to the Bank as collateral security in the alleged loans. Hence, investigation revealed that the borrowers are aware of the facts and their involvement in the alleged conspiracy of the builder with bank officials. The borrower wise details of Income Tax Returns submitted to the Bank in the alleged loan accounts were also indicated.

Investigation revealed that all the accused borrowers are the close associates or the relatives of such close associates of the petitioner. During the course of investigation, Shri Ashwin Kumar Patra (cousin of the petitioner) has confirmed the fact that the accused borrowers are all workers/known persons/relatives/or the relatives of known persons or workers who are



employed with GDS Builders Pvt. Ltd. and/or Dwaraka Jewelers (a partnership firm owned by the petitioner).

During the course of investigation, Shri Ashwin Kumar Patra (cousin of the petitioner) had confirmed the fact that the accused borrowers are all workers/known persons/relatives/or the relatives of known persons or workers who were employed with GDS Builders Pvt. Ltd. and/or Dwaraka Jewelers (a partnership firm owned by the petitioner). It is also revealed that the borrowers who are all the employees and/or the relatives of the employees of GDS builder, Dwaraka Jewelers (company and firm owned by the petitioner) were not financially sound to pay such huge amount as margin money.

The investigation further revealed that in the case of alleged housing loans processed by Shri Ashwini Kumar Patra and sanctioned by Shri Bhubaneswar Mohapatra, the margin money is paid to the builder/seller in full, before the sanction of loan (in cash) which apparently implies the knowledge and involvement of the Bank officers in the alleged act of criminal conspiracy. The net-worth arrived in respect of the borrowers is not based on documents and hence, invalid as per the Bank's instructions.



Investigation further revealed that as per the extant circular instructions of the Bank, the disbursements from the loan accounts of the borrowers to the account of builder/seller is to be done after obtaining the written consent of the borrower as well as the written request of the builder duly confirming the work completed till the date of request and enclosing the respective bills/invoices. It was also revealed that the Branch officers have to mandatorily carry out a post-sanction inspection of the property and record the findings in the inspection report. Based on the findings in the inspection report only, margin money arranged by the borrower is disbursed. During the stage of the disbursement, the Branch Head has to authorize the disbursement amount to be made to the builder duly noticing his remarks. However, investigation has revealed that post-sanction inspection was not carried out at every stage of disbursement as per the circular guidelines of the Bank. It was revealed that during March 2018, Shri Ashwini Kumar Patra (Marketing Officer) had conducted the post-sanction inspection of properties financed in the alleged loan accounts by the Bank and compiled the inspection reports. All the said inspection reports are found to be signed by Shri Ashwini Kumar Patra and are held on record as a part of the loan documents.



Investigation revealed that that 04 flats were in ready to occupy condition but three flats in the names of borrowers, namely, Smt. Swapna Sikha, Shri Manoj Kumar Patra & Shri Ajay Kumar Parida were partially constructed (around 50 to 60% work completed and remaining work pending) but full loan amount to the builder from the 03 loan accounts of said borrowers were disbursed by the accused bank officials.

Investigation revealed that the aforesaid post-sanction inspection reports in the case three flats located at B. K. Sastry Enclave, IRC Village, Jayadev Vihar, Bhubaneswar are invalid/false as the completed buildings mentioned in the said inspection reports are not yet complete and that full amount of the sanctioned limits in the loan accounts of the accused borrowers was disbursed by the Bank to the bank account of the company GDS Builders Pvt. Ltd. with the Bank through transfer mode. Investigation revealed that Shri Bhubaneswar Mohapatra had full knowledge of all the disbursements made in the alleged housing loan accounts of the accused borrowers to the bank accounts of the accused builder/sellers as he along with Shri Ashwini Kumar Patra had signed/initialed the respective disbursement vouchers. Competent witness from the Bank who was acquainted with the signatures/initials of Shri Bhubaneswar



Mohapatra as well as Shri Ashwini Kumar Patra during the regular course of banking has identified the signatures/initials of the said officers on the said disbursement vouchers. It was also revealed that no consent of the borrower was obtained before debiting the loan account of the borrowers. Further, all the seven housing loan proposals were processed by Shri Ashwini Kumar Patra as Asst. Manager (Marketing) of the bank and Shri Bhubaneswar Mohapatra sanctioned the loans in the capacity of Branch Manager in favor of seven borrowers based on the recommendations of Shri Ashwini Kumar Patra. The accused bank officials, namely, Shri Bhubaneswar Mohapatra & Shri Ashwini Kumar Patra had not complied with the banking norms of UBI while processing, sanctioning and disbursing of the alleged housing loans. Some of the deviations of extant guidelines/procedures on the part of Shri Bhubaneswar Mohapatra, the then Chief Manager, UBI, Nayapalli Branch and Shri Ashwini Kumar Patra, the then Asst. Manager (marketing), UBI, Nayapalli Branch revealed during investigation, were summarized in the charge sheet.

Investigation revealed that out of the seven alleged housing loans, the Bank has disbursed the loan amounts related to one alleged housing loan account in the name of Shri Mithun



Pradhan by way of demand draft of Rs.49,20,000/- favouring M/s. Surnag Builders Pvt. Ltd., Bhubaneswar (represented by Smt. Anuradha Patro, MD of Surnag Builders Pvt. Ltd.). As the questioned flat/property is ready to occupy, a single disbursement can be made as per the guidelines of the Bank ensuring the payment of the margin money. However, the loan was closed on 18.12.2019 by Shri Gajendra Prasad Das (known person to the petitioner) paying full dues to the Bank. Similarly, the Bank has disbursed the full loan amounts related to one alleged housing loan account in the name of Shri Durga Prasad Das by transfer to the bank account in the name of Smt. Pushpanjali Patro with the Bank. As the questioned flat/property is ready to occupy, a single disbursement can be made as per the guidelines of the Bank ensuring the payment of the margin money. However, the loan was closed on 18.12.2019 by Shri Santosh Kumar Parida (known person to the petitioner) paying full dues to the Bank. The liability of Smt. Anuradha Patro & Smt. Pushpanjali Patro was ceased after registration of the ready to occupy flats in the names of the accused borrowers. Further, the registrations were found genuine and mortgage was valid. Similarly, the Bank disbursed the full loan amounts related to the remaining five housing loan accounts of respective accused



borrowers to the bank account of M/s. GDS Builders Pvt. Ltd. represented by its director (the petitioner herein) with Union Bank of India on different dates from 24.05.2017 to 13.12.2017. It is pertinent to mention here that two flats at Surya Nagar out of the aforesaid five flats are in a state of ready to occupy and remaining three at Jayadev Vihar are still under construction as on date, only outer constructions completed, internal work & finishing work is pending. Although the full amounts in the all the alleged housing loans were disbursed during 2017 itself, the constructions in respect of three flats at Jayadev Vihar are yet to be completed. Moreover, housing loan in the name of accused borrower Smt. Swapna Sikha (related to flat No.201 at Jayadev Vihar, Bhubaneswar) has been closed by fully repaying the bank dues by transfer of funds from the account of GDS Builders Pvt. Ltd. on 13.08,2019. During the course of investigation, the Bank carried out fresh valuation of the mortgaged properties (only in respect of the loans in which outstanding dues exist on date) during March 2020 and the total value of the said mortgaged properties was evaluated by the empanelled valuer of the Bank at Rs.2,53,80,000/- which is much lower than the total dues outstanding in the alleged loan accounts.



Contentions of the Parties:

5. Mr. Ashok Parija, learned Senior Advocate appearing for the petitioner submitted that by order dated 16.11.2021, this Court was pleased to direct the release of the petitioner on interim bail for a period of six months in all the three bail applications, *inter alia*, with the condition that he shall furnish cash security of Rs.50,00,000/- (rupees fifty lakhs) at the time of furnishing of bail bond and to give an undertaking before the learned trial Court to the effect that he shall deposit a sum of Rs.2,50,00,000/- (rupees two crores fifty lakhs) on five equal installments of Rs.50,00,000/- (rupees fifty lakhs) each every month and the first of such installments shall be deposited before the learned trial Court between 6th to 10th December 2021. Thereafter, the petitioner filed applications for modification of the orders dated 16.11.2021, which was declined by this Court as per order dated 10.01.2022.

Challenging the orders dated 16.11.2021 and 10.01.2022 passed by this Court in the present three bail applications, the petitioner preferred Special Leave Petitions before the Hon'ble Supreme Court which were disposed of on 17.05.2022 with the following observations:

“In view of the above, the petitioner would be at liberty to submit the relevant documents relating to the immovable property offered by him in lieu



of cash security. If the High Court is satisfied with the same, it may consider accepting the immovable property as a security in lieu of cash security for releasing the petitioner on bail.”

Pursuant the aforesaid order, the petitioner filed interim applications for passing appropriate orders. Submission was made by the learned counsel for the petitioner that in pursuance of the order dated 16.11.2021, the petitioner was released from custody after furnishing the bail bond so also the cash security of Rs.50,00,000/- (rupees fifty lakhs) on 24.11.2021, but he voluntarily surrendered on 13.12.2021. Taking into account the land documents and encumbrance certificate with an affidavit of one Keshab Pradhan and the instructions obtained by the learned Special Public Prosecutor for C.B.I. on such documents, the interim applications were disposed of vide order dated 22.07.2022 by modifying the order dated 16.11.2021, the operative portion of which reads as under:

“Considering the submissions made by the learned counsel for the respective parties and keeping in view the aforesaid order passed by the Hon'ble Supreme Court on 17.05.2022 and the instruction obtained by the learned Special Public Prosecutor, the order dated 16.11.2021 is modified to the extent that instead of filing an



undertaking before the learned trial Court to the effect that the petitioner shall deposit a sum of Rs.2,50,00,000/- (rupees two crore fifty lakhs) in five equal installments of Rs.50,00,000/- (rupees fifty lakhs) each every month, if Keshab Pradhan files the surety bond and produce the original documents i.e. Record of Right and EC which have been annexed as Annexure-1 series to the memo dated 30.06.2022 filed before this Court and verified by the learned Special Public Prosecutor, the same shall be accepted and the petitioner shall be released on interim bail for the remaining period as per the order dated 16.11.2021. Copies of the documents which are filed before this Court along with the memo dated 30.06.2022 shall be sent by the Registry to the Court of learned Addl. Sessions Judge -cum- Special Judge, CBI Court No. I, Bhubaneswar in T.R. Case No.07 of 2021 with a copy of this order.'

Challenging the orders dated 22.07.2022 passed by this Court in the present bail applications, the petitioner moved the Hon'ble Supreme Court by filing Special Leave Petitions and the Hon'ble Supreme Court by order dated 14.12.2022 while issuing notice to the respondents, stayed the order of this Court directing the petitioner to surrender before the learned trial Court until further orders.



Thereafter, the Hon'ble Supreme Court finally by order dated 08.01.2024 disposed of the Special Leave Petitions directing that the interim protection granted in favour of the petitioner shall continue to operate in his favour till the bail applications moved by him are disposed of on merits by this Court.

Mr. Ashok Parija, learned Senior Advocate appearing for the petitioner submitted that even though charge sheet has been filed way back on 31.12.2020, till date no charge has been framed and that apart, there are ninety six prosecution witnesses to be examined and 457 documents are to be proved by the prosecution in total in the three cases and thus, the trial is not going to be concluded in the near future. He stressed that the petitioner has been in judicial custody for more than eighteen months. Further, it is submitted that pursuant to the interim orders passed by this Court as well as the Hon'ble Supreme Court, the petitioner while on bail has not flouted any terms and conditions of the bail order and appeared before the learned trial Court on each date and therefore, the petitioner may be directed to be released on bail.

To substantiate his argument, the learned counsel has relied upon the decisions of the Hon'ble Supreme Court in



the cases of **Javed Gulam Nabi Shaikh -Vrs.- State of Maharashtra and another reported in (2024) SCC OnLine SC 1693, Rafiq & another -Vrs.- Munshilal and another reported in (1981) 2 Supreme Court Cases 788** as well as this Court in the cases of **Narendra Nayak and others -Vrs.- State of Odisha reported in 2022 (II) Orissa Law Reviews 482, Smruti Ranjan Mohanty -Vrs.- State of Odisha reported in 2022 (I) ILR-CUT-434.**

6. Mr. Sarthak Nayak, learned Special Public Prosecutor appearing for the C.B.I., on the other hand, vehemently opposed the prayer for bail and submitted that while the present three bail applications were subjudiced before this Court, the petitioner filed three fresh bail applications i.e. BLAPL Nos. 11623 of 2021, 11625 of 2021 and 11627 of 2021 on 30.12.2021 by changing advocate wherein a wrong certificate was furnished that the present three bail applications have been disposed of vide order dated 16.11.2021, however those subsequent bail applications were disposed of as withdrawn as per the order dated 08.07.2022. It is further submitted that on 22.07.2022 when the terms and conditions of the interim bail orders dated 16.11.2021 were modified in the present three bail applications, challenging the orders dated 22.07.2022, the petitioner approached the



Hon'ble Supreme Court in Special Leave Petitions and the Hon'ble Supreme Court vide order dated 14.12.2022 was pleased to stay the order of surrender of the petitioner as per the order of this Court till the bail applications of the petitioner are considered and disposed of by this Court. On 02.05.2023, when the present three bail applications were listed for orders for final adjudication, the order dated 06.01.2023 passed by the Hon'ble Supreme Court was produced before this Court and a submission was made by the learned counsel who was then appearing for the petitioner that inadvertently in the orders of the Hon'ble Supreme Court dated 06.01.2023, it has been mentioned that the stay order was extended till the bail applications are considered and disposed of by the High Court, but in fact it should be the S.L.Ps. are considered and disposed of by the Hon'ble Supreme Court and in that respect, learned counsel appearing in the Supreme Court has been instructed to move necessary applications for correction of the order dated 06.01.2023. According to Mr. Nayak, the submission that was made on 02.05.2023 before this Court was to mislead the Court for which this Court could not take up the hearing of the present bail applications finally and the case was adjourned and the petitioner enjoyed the liberty. On the next date i.e. on



03.07.2023, when the matter was taken up, no one appeared on behalf of the petitioner to move the bail applications for which the bail applications were dismissed for non-prosecution and it was restored on 25.08.2023 on the basis of restoration applications. Mr. Nayak, learned Special Public Prosecutor placed the order dated 07.08.2023 passed by the Hon'ble Supreme Court in Special Leave to Appeal (Criminal) No.12474 of 2022 dated 07.08.2023 which indicates that Dr. Menaka Guruswamy, learned Senior Counsel appearing for the petitioner submitted that due to incorrect instructions given by the learned counsel for the petitioner before the High Court to the effect that an application shall be moved before the Supreme Court for correction in the order passed on 06.01.2023, the petitioner has withdrawn the power of attorney in favour of the said counsel and has engaged a new counsel. Reliance was placed on the judgment of the Hon'ble Supreme Court passed in the case of **Kusha Duruka -Vrs.- State of Odisha reported in (2024) 4 Supreme Court Cases 432**, in which certain suggestions were given with a view to streamline the proceedings and avoid anomalies with reference to the bail applications being filed in the cases pending trial and even for suspension of sentence. Reliance has also been placed on the decision of the Hon'ble



Supreme Court in **Re: Perry Kansagra reported in 2022 LiveLaw (SC) 576** wherein it is stated that a person who makes a false statement before a Court, attempts to deceive the Court and interferes with the administration of justice, is guilty of contempt of Court. The learned counsel further submitted that the amount involved in all the three cases are huge and it is an economic offence and even though there is delay in the commencement of trial but since the petitioner is enjoying liberty granted to him by this Court by way of interim bail and subsequent orders passed by the Hon'ble Supreme Court, he cannot be said to be prejudiced in any manner. It is vehemently urged that on account of misleading and false statement before this Court, the disposal of the present three bail applications got delayed and the petitioner enjoyed liberty and therefore, in view of the nature and gravity of accusations and the conduct of the petitioner in playing tricks with the Court, the bail applications should be dismissed.

7. In reply to the submissions made by the learned Special Public Prosecutor, Mr. Ashok Parija, learned Senior Advocate urged that there was no suppression or misleading of fact either before this Court or before Hon'ble Supreme Court. It is argued that though three bail applications were filed on



30.12.2021 inadvertently with an incorrect certificate that the present three bail applications were disposed of on 16.11.2021, but coming to realise the mistakes committed, withdrawal memos were filed on 18.02.2022 and on the basis of such memos, this Court disposed of the bail applications as withdrawn vide order dated 08.07.2022. The learned counsel argued that merely because during the pendency of the present three bail applications, fresh bail applications were filed which were disposed of as withdrawn, the same cannot be a ground not to consider the present three bail applications on merits. The learned counsel emphatically contended that after release on the interim bail vide order dated 22.07.2022, the petitioner has been appearing before the learned trial Court without fail sixty eight times and no application seeking for exemption from personal appearance has ever been filed before the learned trial Court and moreover the petitioner has not flouted any terms and conditions of the bail orders dated 16.11.2021 and 22.07.2022 and therefore, when there is no chance of early disposal of the trial in the three cases, the bail applications of the petitioner should be favourably considered.

8. Adverting to the contentions raised by the learned counsel for the respective parties, it is apparent that on



16.11.2021 the petitioner was granted interim bail for a period of six months from the date of release taking into account his period of detention in judicial custody as well as the affidavit filed by the wife of the petitioner pursuant to order dated 09.11.2021. Several conditions were imposed, inter alia, to deposit cash security of Rs.50,00,000/-(rupees fifty lakhs) at the time of furnishing of bail bond and to give an undertaking before the learned trial Court to deposit Rs.2,50,00,000/- (rupees two crores fifty lakhs) in five equal installments of Rs.50,00,000/- (rupees fifty lakhs) each on every month. After the modification application of the order dated 16.11.2021 was rejected by this Court on 10.01.2022, the petitioner approached the Hon'ble Supreme Court and as per the order dated 17.05.2022 passed by the Hon'ble Supreme Court, this Court vide order dated 22.07.2022 modified the condition of deposit of cash security Rs.2,50,00,000/- (rupees two crores fifty lakhs) in five equal installments and directed to accept property security in lieu of that. On 22.07.2022, a submission was made by the learned counsel for the petitioner that though as per the order dated 16.11.2021, the petitioner was released on interim bail furnishing cash security of Rs.50,00,000/-(rupees fifty lakhs) from 24.11.2021, but he voluntarily surrendered on 13.12.2021.



There is no dispute that after passing of the order dated 22.07.2022, on furnishing property security, the petitioner has been released from custody and till date he is enjoying liberty in view of the orders passed by this Court and the Hon'ble Supreme Court staying the order of surrender of the petitioner. The submissions made by the learned Special Public Prosecutor has substantial force inasmuch as when the petitioner was granted interim bail as per orders dated 16.11.2021 for a period of six months and the cases were directed to be listed on 20.06.2022 for filing surrender certificates and the petitioner was also released from jail in pursuance of such orders on 24.11.2021, he should not have filed three fresh bail applications i.e. BLAPL No. 11623 of 2021, 11625 of 2021 and 11627 of 2021 on 30.12.2021 and that to mentioning in the certificate portion that the present three bail applications were disposed of on 16.11.2021. It is of course true that withdrawal memos were filed by the petitioner's counsel on 08.02.2022 in those fresh bail applications and ultimately those bail applications were disposed as withdrawn as per order dated 08.07.2022. I am of the humble view that there was an attempt to mislead this Court when the matter was taken up on 02.05.2023 when a submission was made by the learned counsel for the petitioner that instructions



have been given to the learned counsel appearing in the Hon'ble Supreme Court to move necessary applications for correction of the order dated 06.01.2023 wherein it has been mentioned that the stay order was extended till the bail applications are disposed of by the High Court and it should be SLPs are considered and disposed of by the Hon'ble Supreme Court. The submission that was made by Dr. Menaka Guruswamy, learned Senior Counsel appearing for the petitioner before the Hon'ble Supreme Court on 07.08.2023 makes it very clear that incorrect instructions were given by the learned counsel appearing for the petitioner before this Court to the effect that an application shall be moved before the Supreme Court for correction in the order passed on 06.01.2023 for which the petitioner has withdrawn the Power of Attorney in favour of the said counsel and has engaged a new counsel. Statement made by learned Senior Counsel in the Supreme Court shows that a misleading statement was made on 02.05.2023 to take adjournment and to allow the petitioner enjoys liberty as much as possible. In fact, the record indicates that one learned counsel moved all the three bail applications on 16.11.2021 when the interim bail for six months was granted, I.A. Nos. 1041 of 2022, 1042 of 2022 and 1043 of 2023 were filed in the three bail applications respectively and moved by



another learned counsel for modification of order dated 16.11.2021 and the orders were modified on 22.07.2022 and after the bail applications were dismissed for non-prosecution, there was change of counsel and another new counsel entered appearance for the petitioner. The change of counsel each time seems to be deliberately made so as to shift responsibility.

Mr. Parija, learned Senior Advocate for the petitioner placed reliance on **Rafiq** (supra) to argue that a party should not be allowed to suffer for the fault of his Advocate. The following observations were made in the aforesaid case:

“3. The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned Advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate



in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr A.K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. Maybe, we do not know, he is better informed in this matter. Ignorance in this behalf is our bliss. Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into disrepute. What is the fault of the party who having done everything in his power expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. Maybe that the learned Advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the



matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to its original number in the High Court and be disposed of according to law. If there is a stay of dispossession it will continue till the disposal of the matter by the High Court. There remains the question as to who shall pay the costs of the respondent here. As we feel that the party is not responsible because he has done whatever was possible and was in his power to do, the costs amounting to Rs 200 should be recovered from the advocate who absented himself. The right to execute that order is reserved with the party represented by Mr A.K. Sanghi.

In the case in hand, petitioner is neither a villager nor belonged to a rural area. He is a resident of State Capital and a builder and it cannot be said that he was having no knowledge of this Court's order passed on 16.11.2021, on the basis of which he was released from jail and he was asked to surrender in the trial Court on expiry of the interim bail period



and there was an order to produce the surrender certificate and a date was fixed for such purpose.

So far as the misleading statement made by the learned counsel for the petitioner on 02.05.2023 for which this Court could not take up the bail applications on merits on that day, it is a settled position of law that a party must not mislead the Court nor should it suppress any material fact which may derail the course of adjudication. False and misleading statements in Court create obstacles in the dispensation of justice. Indian judiciary is considered by the citizens in the country with the highest esteem. The High Court is a protector of the fundamental rights of the citizens and it is also endowed with a duty to keep the other pillars of democracy i.e. the Executive and the Legislature, within the constitutional bounds. Truth plays pivotal role in the justice delivery system and the entire judicial system exists for discerning and finding out the real truth. It is often said that it is better to lose a case by making correct statement in Court than to lose the confidence of the Court by deliberately making false or misleading statements. In the case of **H.P. Scheduled Tribes Employees Federation -Vrs.- H.P. Samanaya Varg Karamchari Kalayan Mahasangh reported in (2013) 10 Supreme Court Cases 308**, the Hon'ble



Supreme Court underscored the sacrosanct faith placed upon the submission made by counsel and observed:

“31. When a statement is made before this Court, it is, as a matter of course, assumed that it is made sincerely and is not an effort to overreach the Court. Numerous matters even involving momentous questions of law are very often disposed of by this Court on the basis of the statement made by the learned counsel for the parties. The statement is accepted as it is assumed without doubt, to be honest, sincere, truthful, solemn and in the interest of justice. The statement by the counsel is not expected to be flippant, mischievous, misleading and certainly not false. This confidence in the statements made by the learned counsel is founded on the assumption that the counsel is aware that he is an officer of the Court.”

A party forfeits to claim any leniency from the Court after playing fraud on it or misleading it on questions of fact or law. A false statement is a lie. Once a lie is told, it always starts with a series of lies. If there is suppression of material facts or twisted facts are placed before the Court, it can be a ground in refusing relief. Unscrupulous litigants abuse the process of the Court by deceiving it.



9. Now coming to the merits of the case, no doubt the submission of the learned Senior Advocate Mr. Parija is correct that the charge sheet was submitted on 31.12.2020 and trial is yet to commence, but when the petitioner was released from judicial custody on 24.11.2021 as per the order of this Court dated 16.11.2021 till he voluntarily surrendered on 13.12.2021 and again as per the order passed by this Court dated 22.07.2022, he was released from jail and as per the stay orders passed by the Hon'ble Supreme Court, he has not been taken into judicial custody thereafter, it cannot be said that he has been in custody for such a long period particularly taking into account the nature and gravity of the accusations against him.

Mr. Parija, learned Senior Advocate for the petitioner argued that bail is the rule and jail is the exception and therefore, bail cannot be withheld as a pre-conviction punishment/incarceration. To that effect, he placed reliance upon the judgment of this Court in this case of **Smruti Ranjan Mohanty** (supra), wherein it was held as follows:

"8. Bail, as it has been held in a catena of decisions, is not to be withheld as a punishment. Bail cannot be refused as an indirect method of punishing the accused person before he is convicted. Furthermore, it has to be borne in mind that there is as such no justification for



classifying offences into different categories such as economic offences and for refusing bail on the ground that the offence involved belongs to a particular category. It cannot, therefore, be said that bail should invariably be refused in cases involving serious economic offences. It is not in the interest of justice that the Petitioners should be in jail for an indefinite period. No doubt, the offence alleged against the Petitioners is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, however, should not deter this Court from enlarging the Petitioners on bail when there is no serious contention of the Respondent that the Petitioners, if released on bail, would interfere with the trial or tamper with evidence.”

Placing reliance upon **Javed Gulam Nabi** (supra) in which case the appellant was in custody for four years, learned Senior Advocate argued that the pre-conviction detention of the petitioner in the custody infringes his invaluable right to life under Article 21 of the Constitution. In the aforesaid case, the Hon’ble Supreme Court held as follows:

“8. Having regard to the aforesaid, we wonder by what period of time, the trial will ultimately conclude. Howsoever serious a crime may be, an accused has a right to speedy trial as enshrined under the Constitution of India.



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19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.

21. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution."

Reliance was further placed upon **Narendra Nayak** (supra), wherein granting bail to an economic offender, this Court held as follows:



10. This Court is conscious of the law relating to grant of bail in case of economic offences. The Apex Court in the case of **Y.S. Jagan Mohan Readdy vs. CBI, reported in (2013) 55 OCR (SC) 1321** held as under;

"While granting bail, the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of public/State and other similar considerations."

Recently, in the case of **Manish Sisodia -Vrs.- Directorate of Enforcement reported in 2024 SCC OnLine SC 1920** the Hon'ble Supreme Court reiterated the age old adage of criminal jurisprudence, i.e. "bail is the rule and jail is the exception" in the following words:

"53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled



principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that "bail is rule and jail is exception".

The Judge while deciding an application for bail can neither be unreasonably harsh nor be unduly sympathetic; rather he has to be guided by judicial conscience. In the words of eminent jurist Benjamin N. Cardozo:

"The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in the social life'.



Wide enough in all conscience is the, field of discretion that remains.”

It is no more *a res integra* that Courts must be slow in granting bail to persons accused in economic offences and the Hon’ble Supreme Court has time and again held that economic offences are crime against the society which affects very social and economic fabric of the nation. In the case of **P. Chidambaram -Vrs.- Directorate of Enforcement reported in (2019) 9 Supreme Court Cases 24**, the Hon’ble Supreme Court held as follows:

“80. Observing that economic offence is committed with deliberate design with an eye on personal profit regardless to the consequence to the community, in *State of Gujarat v. Mohanlal Jitamalji Porwal* : (1987) 2 SCC 364, it was held as under:

“5....The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to



the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.”

81. Observing that economic offences constitute a class apart and need to be visited with different approach in the matter of bail, in **Y.S. Jagan Mohan Reddy Vs. CBI : (2013) 7 SCC 439** , the Supreme Court held as under:

“34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

35. While granting bail, the court has to keep in mind the nature of accusations,



the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.”

The present three cases involve allegations of commission of economic offences. The charge sheet accusations, the manner in which fraud has been committed by the petitioner in connivance with the other accused persons who are his close associates or the relatives of such close associates and huge amount of public money from the Bank has been siphoned off by creating forged documents and there was wrongful loss to the Bank and wrongful gain to the petitioner, on the sole ground of detention for some period in judicial custody, it would not be proper to release the petitioner on bail.

In view of the foregoing discussions, since the crime seems to have been committed in a cool, calculated and organized manner causing wrongful loss of crores of rupees to



the Bank and siphoning off public money and there are prima facie materials showing involvement of the petitioner in the deep-rooted conspiracy with other co-accused persons to cause such a huge loss to the Bank, in my humble opinion, granting bail to the petitioner in economic offences of this nature would be against the larger interest of public and State particularly when there are chances of tampering with the evidence.

However, taking into account the fact that the charge sheet has already been submitted since 31.12.2020, the learned trial Court shall do well to expedite the framing of charge if there are no other impediments. A list of witnesses to be examined by the prosecution shall be furnished to the Court by the learned Public Prosecutor, CBI immediately after framing of charges and accordingly summons to be issued. All possible steps shall be taken to proceed with the trial by examining the witnesses on day-to-day basis keeping in view salutary provision under 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 these particular three cases, the cases 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 framing of charge. The petitioner is at liberty to renew the prayer for bail in case the trial is not concluded within the said period.

The petitioner who is on bail shall surrender before the learned trial Court within one week from today, failing which the learned trial Court shall take all effective steps for his arrest in accordance with law.

Accordingly, all the three bail applications sans merit and hence dismissed.

Before parting, I would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for bail made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the trial Court at the appropriate stage of the trial.



Issue certified copy as per Rules.

A copy of this order be communicated to the learned trial Court for compliance.

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S.K. Sahoo, J.

Orissa High Court, Cuttack
The 16th August 2024/PKSahoo/Sipun