IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC NO.1483 of 2023

(In the matter of an application under Section 482 of Code of Criminal Procedure, 1973).

A.F.R.

Susanta Kumar Samantaray and another .... ***Petitioners***

-versus-

State of Odisha (VIG.) .... ***Opposite Party***

For Petitioner : ***Mr. H.K. Mund, Sr. Advocate***

For Opposite Parties : ***Mr. N. Maharana, Standing Counsel (Vigilance)***

CORAM:
JUSTICE V. NARASINGH

DATE OF HEARING :23.08.2023
DATE OF JUDGMENT:18.12.2023

V. Narasingh, J.

By filing this Petition under Section 482 of the Cr.P.C., the accused-Petitioners are assailing the order dated 20.03.2023 passed by the learned Special Judge, Vigilance, Bhawanipatna in G.R. Case No.21 of 2021 (V) and also seeking a direction from this Court to give effect to the order passed by this Court dated 24.01.2022 in ABLAPL Nos.16694 and 16666 of 2021.

1. Heard learned Senior Counsel for the Petitioners and learned counsel for the Opposite Party.

2. The brief facts germane for just adjudication is stated hereunder;

> "……. that on 15.12.2021, F.I.R. vide, Annexure-1 was registered against the petitioners and three others alleging commission of offences U/S 13(2) r/w 13(1)(c) of the P.C. Act., 1988 and Sections 409/468/471/477-A/120-B of the I.P.C. vide Koraput Vigilance P.S. Case No.27 of 2021 which was registered as G.R. Case No.21 of 2021(v) in the Court of the Special Judge Vigilance, Bhawanipatna. The allegation against the present petitioners is that they being public servants committed criminal conspiracy with some subordinate officials of their department in misappropriating a sum of Rs.23,63,940/- causing wrongful loss to the Government and were also responsible for forging some official documents. The specific allegation was that funds were allotted for plantation of seedlings and on verification by the Vigilance it was allegedly found that the plantation was not properly done as required number of plants were not there at the spot.
> xxx xxx xxx"

3. Apprehending arrest in connection with the aforementioned vigilance case, the Petitioners filed ABLAPL No.16694 and 16666 of 2021 respectively and were allowed by this Court by order dated 24.01.2022. The operative part of the order reads as under;

> "…….. accordingly, this Court directs that in the event of arrest of the petitioner in connection with the aforesaid case, he shall be released on bail on furnishing bail bond of Rs.10,000/- (rupees ten thousand) with two sureties each for the like amount to the satisfaction of the arresting officer with further conditions that he shall appear before the Investigating Office on receipt of the written notice and he shall cooperate with the

> investigation and shall further appear before the Investigating Officer as and when required and he shall not try to tamper with the evidence in any manner. If the petitioner fails to appear on receipt of written notice or does not cooperate with the investigation, the prosecuting agency is at liberty to seek appropriate remedy for cancellation of the anticipatory bail order of the petitioner.
> xxx xxx xxx"

4. It is apposite to note that in the case at hand charge sheet was submitted against the Petitioners and other accused persons for offences U/s-13(2) r/w 13(1)(C) of the P.C. Act, 1988 and U/s-409/468/471/477(A)/120B of the IPC and Petitioners were shown as "not arrested" in the said charge sheet.

5. After submission of such charge sheet at Annexure-2, learned Court took cognizance of the offence and issued summons pursuant to which the present Petitioners appeared on 20.03.2023 and filed applications for bail.

6. The learned Special Judge rejected the Petitioners prayer for bail and by the impugned order dated 20.03.2023 at Annexure-5 remanded the accused Petitioners to custody.

7. Learned Senior counsel for the Petitioner, Mr. Mund submits that the impugned order is ex-facie illegal. And, in doing so the learned Special Judge lost sight of sub-section 3 of Section 438 of Cr.P.C. whereby, the learned Court was required to issue a bailable warrant in the face of the order passed by this Court under Section 438(1) of the Cr.P.C.

8. It is his further submission that the finding of the learned Court that the Petitioners did not cooperate in de-hors the record. It is also stated by the learned senior counsel that since the Petitioners were remanded to custody and this Court has granted them interim

bail, there is no necessity of the Petitioners again surrendering before the learned Court in seisin.

9. Per contra, learned counsel for the Vigilance Department, Mr. Maharana submits that in the face of alternative remedy available, the CRLMC under Section 482 Cr.P.C. is liable to be rejected.

10. While rejecting application for bail, the learned Court in seisin referred to the judgment of the Apex Court in the case of **Satender Kumar Antil vrs. Central Bureau of Investigation & another**, reported in **2022 (10) SCC 51** and arrived at the finding that "in cases of category D offence (Economic Offences), the Court shall decide the bail application on merit on the appearance of the accused in Court pursuant to the process issued".

11. The learned Trial Court also further observed as under;

> "……. In the present case, it appears that even though the Hon'ble High Court granted anticipatory bail in favour of the accused persons with specific direction that in the event of arrest, they shall be released on bail with some conditions, they did not appear before the I.O. nor cooperated in the investigation in any manner. ……"

12. By order dated 05.04.2023, this Court directed the Petitioners to be released on interim bail in I.A. No.1054 of 2023.

13. The impugned order of the learned Trial Court remanding the accused-Petitioners in custody in the face of anticipatory bail granted by this Court is ex-facie illegal in the light of the judgment passed by the constitution Bench of the Apex Court in the case of **Sushila Aggarwal & others Vrs. State (NCT Delhi) & another, AIR 2020 SC 831** wherein, the Apex Court has held that Anticipatory bail once granted shall normally continue till end of trial.

14. In the said case, question No.2 referred to constitution Bench was "Whether the life of an anticipatory bail should end at the time and stage when the accused is summoned by the court." at page-899 (para-77) and while answering such reference, the Apex Court held as under;

> "(2) As regards the second question referred to this court, it is held that the life or duration of an anticipatory bail order does not end normally at the time and stage when the accused is summoned by the court, or when charges are framed, but can continue till the end of the trial. Again, if there are any special or peculiar features necessitating the court to limit the tenure of anticipatory bail, it is open for it to do so."

15. The observation of the learned Court in the impugned order relating to alleged non-cooperation is extracted hereinabove. The basis of such observation is not spelt out.

16. In his written note of submission, learned counsel for the Vigilance Department, Mr. Moharana has stated that "when an accused is extended the benefit of Anticipatory bail and the Investigating agency has neither arrested and nor released him on bail, and submitted Charge Sheet against him showing him as (not arrest), it is presumptive that the Investigating agency does not require his arrest or remand in the case. In that situation, if the accused appears in pursuant to summon issued by the Trial Court and moves the bail application, there is no reason for the Ld. Trial Court to send to remand him in custody, rather he should be released on bail by executing Bail bond with conditions the Ld. Trial Court fixed as deem just and proper."

17. From the aforesaid stand of the Vigilance Authority, it is abundantly clear that the finding of the learned Court that the Petitioner did not cooperate is ex-facie untenable.

18. In referring to the order of the Apex Court in the Case of **Satender Kumar Antil** (supra), the learned Court committed the cardinal sin of referring to a judgment bereft of its context. Oblivious of the law laid down by the Apex Court relating to the interpretation of judgments in the case of **Islamic Academy of Education and another vs. State of Karnataka and others** reported in **(2003) 6 SCC 697** more particularly paragraphs 139 (page-771) thereof wherein, the principle for interpretation of judgment has been set out in detail and the Apex Court referred to its earlier judgments in the case of Executive Engineer, Dhenkanal Minor Irrigation Division vs. N.C. Budharaj reported in **(2001) 2 SCC 721** and also in the case of **Haryana Financial Corporation vs. Jagdamba Oil Mills** reported in **(2002) 3 SCC 496.**

19. For convenience of ready reference paragraphs 139 and 140 of the judgment of **Islamic Academy of Education** ***(supra)*** is extracted hereunder;

> **"139.** A judgment, it is trite, is not to be read as a statute. The ratio decidendi of a judgment is its reasoning which can be deciphered only upon reading the same in its entirety. The ratio decidendi of a case or the principles and reasons on which it is based is distinct from the relief finally granted or the manner adopted for its disposal.
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> **140.** In Padma Sundara Rao v. State of T.N. it is stated: (SCC p.540, paragraph 9)
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> "There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v.

> British Railways Board (Sub nom British Railways Board v. Herrington). Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

20. The preliminary objection raised by the learned counsel for the Vigilance that rightly or wrongly since the Petitioners have been remanded to custody, the only remedy available to them is under Section 439 of Cr.P.C and the present Application under Section 482 of Cr.P.C. is not maintainable.

21. Section 482 of Cr.P.C. for convenience of ready reference is extracted hereunder;

> **"482. Saving of inherent powers of High Court**.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

22. It is trite that in the face of express remedy, the power under Section 482 Cr.P.C is not to be exercised. But in the factual matrix of the case at hand when the accused have been remanded even in the face of an order of anticipatory bail being granted by this Court, on a fallacious interpretation of the order and oblivious of the law governing the field, this Court is of the considered view that self-imposed embargo ought not to deter this Court from exercising its inherent jurisdiction to sub-serve justice.

23. As such the objection of the learned counsel for the vigilance regarding maintainability is negated.

24. In the case at hand, the Petitioners were released on interim bail, as already stated.

25. Hence, the other issue which arises for consideration is as to whether the Petitioners have to surrender before the learned Court below, to be released on bail. In the humble view of this Court, law in this regard is no longer res intergra inasmuch as, in the case of **Sundeep Kumar Bafna vs. State of Maharashtra and another** reported in **(2014) 16 SCC 623,** there has been a detailed analysis of the connotation of the word "custody".

26. The word custody has not been defined in Cr.P.C.**.** Yet there is no cavil that the accused who has been released on interim bail is deemed to be in the constructive custody of the Court in seisin. In this context, it is apposite to refer in the judgment of the Apex Court in the case of **Sundeep Kumar Bafna *(Supra)*.** Wherein, the Apex Court quoted with approval its earlier judgment in the case of **Directorate of Enforcement v. Deepak Mahajan** reported in **(1994) 3 SCC 440** and that of **Niranjan Singh v. Prabhakar Rajaram Kharote** reported in **(1980) 2 SCC 559**;

> "xxx xxx xxx
> 48. Thus the Code gives power of arrest not only to a police officer and a Magistrate but also under certain circumstances or given situations to private persons. Further, when an accused person appears before a Magistrate or surrenders voluntarily, the Magistrate is empowered to take that accused persons into custody and deal with him according to law. Needles to emphasise that the arrest of a person is a condition precedent for taking him into judicial custody thereof. *To put it differently, the taking of the person into judicial custody is followed after the arrest of the person concerned by the Magistrate on appearance or surrender.* It will be appropriate, at this stage, to note that in every arrest, there is custody but not vice versa and that both the words 'custody' and "arrest" are not synonymous terms. Though 'custody' may amount to an arrest in certain

> circumstances but not under all circumstances. If these two terms are interpreted as synonymous, it is nothing but an ultra legalist interpretation which if under all circumstances accepted and adopted, would lead to a startling anomaly resulting in serious consequence, vide Roshan Beevi.
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> 49. While interpreting the expression 'in custody' within the meaning of Section 439 CrPC, Krishna Iyer, J. speaking for the Bench in *Niranjan Singh v. Prabhakar Rajaram Kharote* observed that: (SCC p.563, para 9)
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> > '9. He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. *He can be stated to be in judicial custody when he surrenders before the court and submits to its directions.'* "
> >
> > (emphasis supplied)
>
> If the third sentence of para 48 is discordant to Niranjan Singh, the view of the coordinate Bench of earlier vintage must prevail, and this discipline demands and constrains us also to adhere to Niranjan Singh , ergo, we reiterate that a person is in custody no sooner he surrenders before the police or before the appropriate court.
>
> xxx xxx xxx"

(Emphasis added by this Court)

27. Hence, on the touchstone of the authoritative pronouncement of the Apex Court in the case of **Sundeep Kumar Bafna *(Supra),*** it is held that by virtue of the interim bail granted, Petitioners are deemed to be in the constructive custody of the Court in seisin and since for reasons already stated, the impugned order is set-aside, the interim order is made absolute till the

conclusion of trial on the terms fixed, while releasing the Petitioners.

28. Before parting with this case, this Court is impelled to address the manner in which the impugned order has been passed disregarding the order of anticipatory bail granted to the Petitioners.

29. The justice delivery module of this country follows hierarchical system. In such a system, the Court sub-ordinate in the hierarchy has the bounden duty to follow the direction issued by the higher Court, otherwise, judicial discipline will go haywire.

29.A. In this context, it is apt to note here judgment of the Apex Court in the case of **East India Commercial Co. Ltd Calcutta v. The Collector of Customs, Calcutta** reported in **(1963) 3 SCR 338 = (AIR 1962 SC 1893).** Justice Subba Rao, as his Lordship then was, observed thus;

> "…….. It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceedings in direct violation of it. If a tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working; otherwise there would be confusion in the administration of law and respect for law would irretrivably suffer. ……"

29.B. The same was quoted with the approval in the case of **Shri Baradakanta Mishra v. Shri Bhimsen Dixit** reported in **AIR 1972 SC 2466.** While analyzing the importance of hierarchical system of dispensation of justice, the Apex Court held thus;

> "……. Just as the disobedience to a specific order of the Court undermines the authority and dignity of the court in a particular case, similarly any deliberate and mala fide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court. Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the latter conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court generally, but is also likely to subvert the Rule of law and engender harassing uncertainty and confusion in the administration of law. ……"

30. It is disconcerting to note that while passing the impugned order, the learned Trial Court went on to re-examine the allegations on merit and thereby virtually sat in appeal over the order passed by this Court and in the process rendered the order of this Court passed in ABLAPL nugatory. Such approach amounts to by passing the hierarchal discipline in judiciary which is the corner stone of people's faith in the administration of justice. Such judicial adventurism and overreach is to be shunned, otherwise the edifice will crumble.

31. The CRLMC is accordingly disposed of.

(V.Narasingh)
Judge

Orissa High Court, Cuttack,
Dated the 18th of December, 2023/Santoshi