ORISSA HIGH COURT, CUTTACK

ABLAPL No.8511 of 2020

An application under Section 438 of the Code of Criminal Procedure.

Suman Chattopadhyay .....Petitioner

-Versus-

Republic of India. ..... Opp.party

Advocate(s) who appeared in this case by Video Conferencing mode:

For Petitioner - M/s. Devashis Panda, S. Panda,
D.K. Mahapatra,
G.K. Das, Advocates.

For Opp.party (CBI) - Mr. Sarthak Nayak,
Advocate

For Opp.party (E.D.) – Mr. Gopal Agarwal,
Advocate

PRESENT:-

THE HON'BLE SHRI JUSTICE SATRUGHANA PUJAHARI

Date of judgment:- 17.06.2021

S. PUJAHARI, J. Being apprehensive of his arrest by the C.B.I. in connection with PMLA Case No.148 of 2019 on the file of the Special Court under the Prevention of Money-Laundering Act, 2002 (hereinafter referred to as the "PMLA Act"), Bhubaneswar registered pursuant to an order of commitment passed in R.C. Case No.31(S) of 2014-Kol. under Section 44(1)(c) of the PMLA Act, by the learned

Special C.J.M. (CBI), Bhubaneswar, the petitioner has filed the present application under Section 438 of Cr.P.C. seeking pre-arrest bail.

2. Heard Shri Debasish Panda, learned counsel appearing for the petitioner, Shri Sarthak Nayak, learned counsel appearing for the Republic of India and Shri Gopal Agarwal, learned counsel appearing for the Enforcement Directorate.

3. For the purpose at hand, a brief reference may be made to the background facts as follows:-

Ponzi Companies, many in number, got flourished in the Eastern States of India, basically in Odisha, West Bengal, Assam, Tripura and Bihar, which instigated public through different schemes, to deposit / invest money, with false assurance of impressive returns. Being allured by such lucrative assurance, lacs of gullible depositors parted with their hard earned money with those ponzi firms, who though at initial stage paid some returns, later on after collecting huge amounts of money from public, disappeared from the scene to the dismay and detriment of the depositors. It is alleged that those ponzi firms were able to operate their

network and duped lacs of gullible depositors, under the patronage of political and other influential people of the Society. On the reports of the victims and otherwise, cases were registered and the Investigating Agencies of the respective States handled the investigation. However, in compliance with the order dated 09.05.2014 passed by the Supreme Court of India in two writ petitions, such as, W.P. (Civil) No.401 of 2013 and W.P.(Civil) No.413 of 2013, total forty-four number of such cases were taken over / registered by the then C.B.I. / S.C. / C.I.T./KOL (now renamed as C.B.I./EO-IV-Kol.) and the present case, i.e., R.C. 31(S) of 2014 is one amongst those forty-four cases. It may be mentioned here that the present case had earlier been registered in Odisha vide EOW/Odisha/BBSR P.S. Case No.13 dated 06.05.2013 on the basis of a report lodged by one Rabi Narayan Swain, and the C.B.I. on taking over the said case registered the same as R.C. 31(S) of 2014 on 05.06.2014 against Sudipta Sen and others of “Saradha Group of Industries” for the offences under Sections 120-B read with Sections 406 and 420 of IPC and Sections 4, 5 and 6 of the Prize Chits and Money Circulation Scheme (Banning)

Act, 1973, and submitted charge-sheet on 13.12.2016 in the Court of the Special C.J.M. (CBI), Bhubaneswar, under Section 120-B read with Sections 420 and 409 of IPC and Sections 4, 5 and 6 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1973 against Sudipta Sen, Debjani Mukherjee, M/s. Saradha Reality (India) Limited, M/s. Saradha Tour & Travels Pvt. Ltd., M/s. Saradha Housing Pvt. Ltd. and M/s. Saradha Garden Resort Hotel Pvt. Ltd., keeping open further investigation in view of Section 173(8) of Cr.P.C. The said case has been committed to the PMLA Court, i.e., the Court of the District & Sessions Judge, Bhubaneswar-cum-Special Judge under the PMLA Act within the State of Odisha, pursuant to the application filed by the Enforcement Directorate.

The present petitioner is a journalist who earlier happened to be the Director and share-holder of Disha Productions & Multimedia Pvt. Ltd. (DPMPL). As reported, he ceased to be the share-holder and Director of DPMPL since January, 2013, and presently he is continuing as the Chief Editor of 'Ae Samay', a Bengali newspaper. He was arrested in another case bearing No.R.C.45(S) of 2014 registered in

Odisha against another Ponzi Company, namely "I-Core E-Services Ltd.", and in that connection during a search conducted in his residential premises, some documents were found out to show his relationship with and diversion of funds from M/s. Saradha Group of Industries to DPMPL, of which he earlier happened to be the Director and share-holder, and subsequent misappropriation of an amount of Rs.1.04 Crore. It is alleged that in the year 2010, the petitioner and his Company DPMPL entered into four agreements with two Companies of Saradha Group, and in pursuance of those agreements, an amount of Rs.4,54,00,000/- of Saradha Group was diverted to the petitioner and his company DPMPL as on 20.09.2011, and by another settlement agreement dated 20.09.2011, all the above four agreements were cancelled, and Rs.3.5 Crore out of Rs.4,54,00,000/- was returned to Saradha Group by keeping Rs.1,04,50,000/- with the petitioner. It is alleged that under the agreements aforesaid, no share of DPMPL was parted with, and an amount of Rs.1,04,50,000/- that was wrongfully received by the petitioner from Saradha Group belonged to general public who, ultimately, suffered thereby.

According to the C.B.I., the petitioner being well aware of the fact that the selective companies, such as, Saradha Group, M/s. I-Core, etc. were dealing with ponzi schemes and defrauding the public, habitually entered into agreement with them in the garb of business dealing in order to extract money from them, and in the midway he cancelled the agreements after getting illegal benefits of crores of rupee from those ponzi firms, to the ultimate loss and suffering of gullible depositors / investors.

While being in custody in connection with I-core case, the Investigating Officer in the present case got the petitioner notionally arrested and sought for his remand before the Special C.J.M. (C.B.I.), Bhubaneswar. However, in the meanwhile the case having been committed under Section 44(1)(c) of the PMLA Act to the PMLA Court, the Special C.J.M.(C.B.I.), Bhubaneswar expressed its inability to remand the petitioner in the present case. At that stage, the petitioner came to challenge his notional arrest before this Court by filing an application vide CRLMC No.1618 of 2019 wherein this Court for his non-production within twenty-four hours of his arrest before the appropriate Magistrate, held

his notional arrest to be an otiose while giving liberty to the C.B.I. to seek production and remand of the petitioner from the appropriate Court where the case is pending. The production of the petitioner in the present case pending before the Special Court under the PMLA Act, however, could not be effected as he was hospitalized by then and subsequently released on bail in I-core case pursuant to the order dated 22.07.2020 of the Supreme Court of India in Special Leave Petition (Criminal) No.2895 of 2020. According to the petitioner, as the C.B.I. has been chasing him to arrest in connection with the present case, the application for pre-arrest bail has been filed.

4. Shri Debasish Panda, learned counsel appearing for the petitioner, submitted, inter-alia, that since the petitioner was earlier examined by the Investigating Agency in connection with certain cases of Saradha Group registered at Kolkata, and on those occasions he was not thought necessary or proper to be taken to custody, it would be a futile exercise for the C.B.I. to arrest him in connection with the present case which is also in connection with Saradha Group. According to Shri Panda, the entire transaction of the

petitioner with Saradha Group was nothing but a business dealing having no element of criminality, and the C.B.I. is already in possession of all the connected documents of such business transaction. It is further contended by him that on earlier occasions, the petitioner had shown his willingness and readiness to cooperate with the investigation, and in future also he will make himself available before the C.B.I. for the purpose of further interrogation, if necessary, and there is no necessity of his being taken to custody. It is his further submission that the petitioner having already been granted bail by the Apex Court in I-core case for similar allegations, pre-arrest bail should be granted to him in the present case on taking into consideration his health condition and prevailing Covid-19 situation.

5. Shri Sarthak Nayak, learned counsel appearing for the C.B.I. repudiated the contentions of the petitioner and opposed the application on the grounds, inter-alia, as follows:-

(i) Since the Supreme Court of India has specifically directed the C.B.I. to investigate larger conspiracy, money trail, roles of regulators etc., the arrest and

custodial interrogation of the petitioner by the C.B.I. in the present case involving Saradha Group is essential, inasmuch as it is apparent on record that the petitioner by misusing his media company and adopting an arm-twisting technique against some selective companies dealing with ponzi schemes, extracted crores of rupee which belonged to gullible depositors. In the present case, the petitioner aided the principal accused – Sudipta Sen to escape from SEBI enquiry and promote his business of collection of money from public, by publishing advertisement of Saradha Group in his newspaper "Ek-din" and lobbying for the ponzi firm in Ministry of Finance of Government of India.

(ii) Custodial interrogation of the petitioner is essential to know as to whether any other benefits have been received by him from Saradha Group and other ponzi companies, whether there has been diversion of money from Saradha Group to any other influential persons directly or indirectly, whether there were other patrons of Saradha Group, whether

the petitioner has diverted his ill-gotten money to anybody else etc.

(iii) Being a media person the petitioner is in contact with many influential persons, and there is every chance of his tampering with evidence and threatening / influencing material witnesses, and not cooperating with the investigation.

(iv) Economic offences constitute a class apart, having serious social ramification, and there being prima-facie materials to show the petitioner's involvement in economic offences with larger scale conspiracy, his application deserves to be dismissed.

The learned counsel appearing for the C.B.I. in support of his aforesaid contention has placed reliance on a decision of the Apex Court in the case of ***P. Chidambaram vrs. Directorate of Enforcement,*** reported in (2019) 9 SCC 165.

6. Shri Gopal Agarwal, learned counsel appearing for the Enforcement Directorate submits that the Enforcement Directorate has got nothing to say in this matter as the petitioner is not required in CMC PMLA Case No.45 of 2017 which has been initiated at the instance of the Enforcement

Directorate against the accused persons therein for commission of offence under Section 4 of the PMLA Act. However, the aforesaid PMLA Case having been registered for the scheduled offences alleged to have been committed in R.C. Case No.31(S) of 2014-Kol. then pending before the jurisdictional Magistrate against some of the accused persons, the case has been committed pursuant to an application made under Section 44(1)(c) of the PMLA Act by the Enforcement Directorate, and the case has been registered in the PMLA Court for scheduled offences. The Enforcement Directorate is not a party to the same, even if the trial of the case is to be made in the PMLA Court in view of the provisions contained in PMLA Act, inasmuch as it is required to be prosecuted by the C.B.I. at whose instance the case has been initiated.

7. In course of hearing, the learned counsel appearing for the petitioner has also raised certain points questioning the applicability of PMLA Act to the petitioner, jurisdiction of the Special Court under PMLA Act at Bhubaneswar to try the petitioner, jurisdiction and bona fides of C.B.I. to seek arrest / custody of the petitioner etc. so also, the contention

of the learned counsel for the C.B.I. that custodial interrogation is much more fruitful for an effective investigation and economic offences are class apart and, as such, jurisdiction under Section 438 of Cr.P.C. should not be invoked in favour of the petitioner. Reliance in this regard has been placed by the learned counsel for the petitioner on the Constitution Bench decisions of the Apex Court in the case of ***Gurbaksh Singh Sibbia and others vrs. State of Punjab,*** reported in (1980) 2 SCC 565 and in the case of ***Sushila Aggarwal vrs. State (Nct of Delhi),*** reported in (2020) 5 SCC 1.

8. Before addressing the contention of the parties with regard to the merit of the prayer of the petitioner for pre-arrest bail, it would be apposite to address the technical questions raised by the petitioner regarding the case being committed to the PMLA Court though in the said case neither the petitioner nor any of the accused persons already charge-sheeted is prosecuted for any offence under the PMLA Act, so also the Authority of the PMLA Court to try a scheduled offence along with the case registered under the PMLA Act against some accused persons for the proceeds of

crime of the scheduled offence. Such contention of the petitioner appears to be without any substance in view of the provisions contained in Section 44 of the PMLA Act that the PMLA Court is competent to try a scheduled offence on a case being committed on the prayer of the Enforcement Directorate, if a case is already registered under the PMLA Act, allegedly for proceeds of crime of such scheduled offence and Section 71 of the PMLA act has overriding effect on the other provisions. So far as the contention that the independent registration of a PMLA case with regard to scheduled offence by the PMLA Court is concerned, it is submitted that after commitment of the said case to the PMLA Court, the PMLA Court could not have registered the same independently for trial and the CBI could not have prosecuted the same anymore, appears to this Court to be also fallacious inasmuch as the PMLA Act never mandates that a case registered for scheduled offence when committed has to be tried together with the PMLA case pending before the PMLA Court. The same can also be visualized from the fact that the statute never envisaged for automatic transfer of all the cases registered for commission under scheduled

offence pending in different competent courts for trial of the said cases to the PMLA Court, on registration of a case under the PMLA Act with regard to proceeds of crime of such scheduled offences. It is only when the Enforcement Directorate thinks it just and proper for speedy disposal of the case under the PMLA Act which is dependent on the trial of the scheduled offence, can seek for commitment before the Court where the case for scheduled offence is pending and the Court if satisfied can commit the case. Such case committed has to be independently tried by the PMLA Court and prosecution has to be continued by the Agency prosecuting such scheduled offence. Since in this case the scheduled offence was prosecuted by the CBI even if it has been committed under Section 44(1)(c) of the PMLA Act and independently registered for prosecution of the accused person for the scheduled offence though nomenclature as a PMLA case and the petitioner is being investigated by the CBI, production of the accused in the PMLA Court at the instance of the C.B.I. while he was in custody in another case which could not materialize and after his release the

steps taken by the C.B.I. to apprehend him, cannot be said to be unsustainable.

Otherwise also, all those questions appear to be technical and premature in nature, inasmuch as the present case (R.C. No.31(S) of 2014-Kol.) is at the stage of investigation vis-à-vis the petitioner, and the C.B.I. has taken over the investigation in compliance with the order of the Apex Court to delve into the question of larger conspiracy, money trail, roles of regulators etc. in the crimes committed by Saradha Group of Companies as well as other ponzi companies in the country. As reported, the petitioner was earlier indicted or interrogated in connection with some other cases in Kolkata and in those occasions he had not been taken to custody. But, the same ipso facto cannot be a ground to question the bona fides of C.B.I. to seek his arrest / custody in the cases of Saradha Group of Companies.

9. Having regard to the materials on record, existence of a prima-facie case regarding nexus of the petitioner with the Saradha Group cannot be denied. Grant of bail to him by the Supreme Court of India in another case also cannot afford him a ground to seek pre-arrest bail in the present

case, inasmuch as he was granted bail in the said case solely on health ground while he was admitted in Apollo Hospital, Bhubaneswar. Admittedly, he has since been discharged from the said hospital.

10. The learned counsel appearing for the C.B.I. has laid much emphasis on the fact that since the petitioner has been indicted in an economic offence and sufficient materials are there showing his indictment in the aforesaid serious offence and need of the custodial interrogation of the petitioner to unearth the involvement of any other persons and the larger angle of conspiracy in commission of the offence alleged to have been committed by the ponzi firm, to oppose the prayer of pre-arrest bail. In support of his contention he has placed reliance on a decision of the Apex Court in the case of ***P. Chidambaram (supra)***. The importance and relevance of custodial interrogation of the accused in a case of the present nature and also the Court should be loathed in grant of bail / pre-arrest bail in respect of persons indicted in economic offences has been elaborated by the Apex Court in the aforesaid case as follows:-

"76. In *Siddharam Satlingappa Mhetre v. State of Maharashtra,* the Supreme Court laid down the factors and parameters to be considered while dealing with anticipatory bail. It was held that the nature and the gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made and that the court must evaluate the available material against the accused very carefully. It was also held that the court should also consider whether the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

77. After referring to *Siddharam Satlingappa Mhetre* and other judgments and observing that anticipatory bail can be granted only in exceptional circumstances, in *Jai Prakash Singh v. State of Bihar,* the Supreme Court held as under: (SCC p.386, para 19)

> "19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. (*See D.K. Ganesh Babu v. P.T. Manokaran, State of Maharashtra v. Modh. Sajid Husain Mohd. S. Husain and Union of India v. Padam Narain Aggarwal.)*

Economic Offences:

78. Power under Section 438 Code of Criminal Procedure being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic

offences. Economic offences stand as a different class as they affect the economic fabric of the society. In Directorate of Enforcement v. Ashok Kumar Jain MANU/SC/0007/1998 : (1998) 2 SCC 105, it was held that in economic offences, the Accused is not entitled to anticipatory bail.

79. The learned Solicitor General submitted that the "Scheduled offence" and "offence of money laundering" are independent of each other and PMLA being a special enactment applicable to the offence of money laundering is not a fit case for grant of anticipatory bail. The learned Solicitor General submitted that money laundering being an economic offence committed with much planning and deliberate design poses a serious threat to the nation's economy and financial integrity and in order to unearth the laundering and trail of money, custodial interrogation of the Appellate is necessary.

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 and Ors. MANU/SC/0288/1987: (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 v. CBI MANU/SC/0487/2013 : (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.
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> 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.

82. Referring to Dukhishyam Benupani, Assistant Director, Enforcement Directorate (FERA) v. Arun Kumar Bajoria MANU/SC/0872/1998 : (1998) 1 SCC 52, in Enforcement Officer, Ted, Bombay v. Bher Chand Tikaji Boara and Ors. MANU/SC/0970/1999 : (1999) 5 SCC 720, while hearing an appeal by the Enforcement Directorate against the order of the Single Judge of the Bombay High Court granting anticipatory bail to the Respondent thereon, the Supreme Court set aside the order of the Single Judge granting anticipatory bail.

83. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in

> interrogating the Accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the Accused knows that he is protected by the order of the Court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the Respondent-Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail."

11. However, learned counsel for the petitioner placing placed reliance on a decision of the Apex Court in the case of ***Sushila Aggarwal (supra),*** submitted that there is no restriction in Section 438 of Cr.P.C. to entertain a prayer for bail in respect of the person accused in economic offences. Hence, the contention that since the petitioner has been indicted in economic offence, he should not extended the benefit of pre-arrest bail, appears to be fallacious.

12. There is no reproach on such contention of the counsel for the petitioner with regard to invoking the jurisdiction under Section 438 of Cr.P.C. in respect of the person accused of committing economic offences, inasmuch as there is no such prohibition to entertain such prayer in

respect of the accused persons indicted in economic offences in Section 438 of Cr.P.C., provided the offence committed is non-bailable one. It is only in respect of the offences as enumerated under Section 438(4) of Cr.P.C. and also in respect of offence under special statute wherein jurisdiction under Section 438 of Cr.P.C. has been specifically ousted, even if the offences are non-bailable, a person cannot invoke the jurisdiction under Section 438 of Cr.P.C. seeking pre-arrest bail. In the case of ***Sushila Aggarwal (supra)*** the Apex Court in paragraphs-69, 70 and 71 have held as follows:-

> "69. It is important to notice, here that there is nothing in the provisions of Section 438 which suggests that Parliament intended to restrict its operation, either as regards the time period, or in terms of the nature of the offences in respect of which, an applicant had to be denied bail, or which special considerations were to apply. In this context, it is relevant to recollect that the court would avoid imposing restrictions or conditions in a provision in the absence of an apparent or manifest absurdity, flowing from the plain and literal interpretation of the statute (Ref Chandra Mohan v. State of Uttar Pradesh & Ors38). In Reserve Bank of India v. Peerless

General Finance and 1967 (1) SCR 77 Investment Co. Ltd. & Ors39, the relevance of text and context was emphasized in the following terms:

> "33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then Section by section, Clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.

70. Likewise, in Directorate of Enforcement v Deepak Mahajan 40 this court referred to Maxwell on Interpretation of Statutes, Tenth Edn., to the effect that if the ordinary meaning and grammatical construction: (scc PP.453-54, PARA 25)

> "25……leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words…"

71. This court, long back, in State of Haryana & Ors. v. Sampuran Singh & Ors 41. observed that by no stretch of imagination a Judge is entitled to add something more than what is there in the statute by way of a supposed intention of the legislature. The cardinal principle of construction of statute is that the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. It is sufficient, therefore to notice that when Section 438 – in the form that exists today, (which is not substantially different from the text of what was introduced when Sibbia was decided, except the insertion of sub-section (4)) was enacted, Parliament was aware of the objective circumstances and prevailing facts, which impelled it to introduce that

> provision, without the kind of conditions that the state advocates to be intrinsically imposed in every order under it."

So also, in the case of ***Gurbaksh Singh Sibbia (supra),*** the Apex Court have negatived the proposition that the larger interest of the public and State demand that in serious cases like economic offences involving blatant corruption at the higher rungs of the executive and political power, the discretion under Section 438 of the Code should not be exercised, so also did not endorse the view of the High Court that anticipatory bail cannot be granted in respect of offences like criminal breach of trust for the mere reason that the punishment provided therefor is imprisonment for life as circumstances may broadly justify the grant of bail in such cases too, though of course, the Court is free to refuse anticipatory bail in any case if there is material before it justifying such refusal. The Apex Court have also not held that in case of person accused of economic offence though non-bailable in nature, cannot invoke the jurisdiction of Section 438 of Cr.P.C. for his release on pre-arrest bail nor the aforesaid is the contention of the learned counsel for the

petitioner. The Apex Court in different decisions, however, held that economic offences constitute a class apart, the Court need to visit the same with a different approach in the matter of bail and should be loathed while extending the benefit of bail/ pre-arrest bail to a person accused of such offences. The aforesaid is also the view of the Apex Court in the case of ***P. Chidambaram (supra).***

13. Now, coming to the second contention of the learned counsel for the C.B.I. that since custodial interrogation is much more fruitful for collection of further evidence, and the interrogation of the petitioner is required to unveil the larger conspiracy in the aforesaid heinous and serious offence in which crores of rupee has been collected by the ponzi firm, of which money trail was found with the petitioner, pre-arrest bail should not be granted to him. Reliance in this regard has been placed on a decision of the Apex Court in the case of ***P. Chidambaram (supra).***

14. Controverting to the contention of the learned counsel for the C.B.I. that custodial interrogation of the petitioner is much more fruitful for investigation to unearth

the larger conspiracy and, as such, the petitioner should not be released on pre-arrest bail, learned counsel for the petitioner would submit that the same is fallacious in view of the observation made by the Apex Court in the case of ***Gurbaksh Singh Sibbia (supra)*** in paragraph-19 which reads as thus:-

> "19. A great deal has been said by the High Court on the fifth proposition framed by it, according to which, inter alia, the power under Section 438 should not be exercised if the investigating agency can make a reasonable claim that it can secure incriminating material from information likely to be received from the offender under Section 27 of the Evidence Act. According to the High Court, it is the right and the duty of the police to investigate into offences brought to their notice and therefore, courts should be careful not to exercise their powers in a manner which is calculated to cause interference therewith. It is true that the functions of the Judiciary and the police are in a sense complementary and not overlapping. And, as observed by the Privy Council in King Emperor v. Khwaja Nasir Ahmed :
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> > "Just as it is essential that every one accused of a crime should have free access to a court of justice so that he may be duly acquitted if

> found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry. The functions of the Judiciary and the Police are complementary, not overlapping, and the combination of the individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function...."

But, these remarks, may it be remembered, were made by the Privy Council while rejecting the view of the Lahore High Court that it had inherent jurisdiction under the old Section 561A, Criminal Procedure Code, to quash all proceedings taken by the police in pursuance of two First Information Reports made to them. An order quashing such proceedings puts an end to the proceedings with the inevitable result that all investigation into the accusation comes to a halt. Therefore, it was held that the Court cannot, in the exercise of its inherent powers, virtually direct that the police shall not investigate into the charges contained in the F.I.R. We are concerned here with a situation of an altogether different kind. An order of anticipatory bail does not in any way, directly or indirectly, take away from the police their right to investigate into charges made or to be made against the person

released on bail. In fact, two of the usual conditions incorporated in a direction issued under Section 438 (1) are those recommended in Sub-section (2) (i) and (ii) which require the applicant to co-operate with the police and to assure that he shall not tamper with the witnesses during and after the investigation. While granting relief under Section 438 (1), appropriate conditions can be imposed under Section 438 (2) so as to ensure an uninterrupted investigation. One of such conditions can even be that in the event of the police making out a case of a likely discovery under Section 27 of the Evidence Act, the person released on bail shall be liable to be taken in police custody for facilitating the discovery. Besides, if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court in State of U.P. v. Deoman Upadhyaya to the effect that when a person not in custody approaches a police officer investigating an offence and offers to give information leading to the discovery of a fact, having a bearing on the charge which may be made against him, he may appropriately be deemed to have surrendered himself to the police. The broad foundation of this rule is stated to be that Section 46 of the Code of Criminal Procedure does not contemplate any formality before a person can be

> said to be taken in custody: submission to the custody by word or action by a person is sufficient. For similar reasons, we are unable to agree that anticipatory bail should be refused if a legitimate case for the remand of the offender to the police custody under Section 167 (2) of the Code is made out by the investigating agency."

In the case of ***Gurbaksh Singh Sibbia (supra),*** even if it is held that a legitimate case for remand of an offender to the police custody under Section 167(2) of Cr.P.C. is made out, the same is a no ground to refuse the anticipatory bail, inasmuch as the same in no manner take away the right of police to investigate into the charges made against the person released on bail as appropriate conditions can be imposed to cooperate with the investigation and requirement of Section 27 of the Evidence Act is also fulfilled even after a person is released on bail when gives an information leading discovery of fact deemed to be in custody of police. But, in the case of ***Gurbaksh Singh Sibbia (supra),*** it has never been laid down that in each and every case of pre-arrest bail, even if the police has made out a case for remand to their custody of the accused for an effective investigation, the same is no ground to refuse pre-arrest bail. Acceding to

such an interpretation of the aforesaid observation of the Apex Court in the case of ***Gurbaksh Singh Sibbia (supra)*** as contended by the learned counsel for the petitioner would make the provisions of seeking remand of the accused by the police during the course of investigation for an effective investigation, a redundant one. Furthermore, the Apex Court in the case of ***Gurbaksh Singh Sibbia (supra)*** in paragraph-15 have held as thus:-

> "15. Judges have to decide cases as they come before them, mindful of the need to keep passions and prejudices out of their decisions. And it will be strange if, by employing judicial artifices and techniques, we cut down the discretion so wisely conferred upon the Courts, by devising a formula which will confine the power to grant anticipatory bail within a strait-jacket. While laying down cast-iron rules in a matter like granting anticipatory bail, as the High Court has done, it is apt to be overlooked that even Judges can have but an imperfect awareness of the needs of new situations. Life is never static and every situation has to be assessed in the context of emerging concerns as and when it arises. Therefore, even if we were to frame a 'Code for the grant of anticipatory bail', which really is the business of the legislature, it can at best furnish broad guide-lines and cannot compel blind adherence. In which case to grant bail and in which to refuse it is,

> in the very nature of things, a matter of discretion. But apart from the fact that the question is inherently of a kind which calls for the use of discretion from case to case, the legislature has, in terms express, relegated the decision of that question to the discretion of the court, by providing that it may grant bail "if it thinks fit". The concern of the courts generally is to preserve their discretion without meaning to abuse it. It will be strange if we exhibit concern to stultify the discretion conferred upon the Courts by law.

Further, in the case of ***P. Chidambaram (supra)*** the Apex Court having specifically stated that grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the Accused and in collecting the useful information and also the materials which might have been concealed and success in such interrogation would elude if the Accused knows that he is protected by the order of the Court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation.

15. Since in this case the petitioner has been indicted in an economic offence which is of serious in nature and the larger angle of conspiracy with regard to patronage of

political and other persons in growth of such ponzi firms are required to be unearthed, I am of the view that no effective investigation can be made by the police by enlarging the petitioner on pre-arrest bail, even if he is ready and willing to cooperate with the investigation by remaining on pre-arrest bail.

16. As it appears, in this case the Saradha Group of Company was involved in cheating large number of gullible depositors through different ponzi schemes. During course of investigation, admittedly the money trail of the said ponzi firm was found with the petitioner's firm. There is also material to show that the petitioner made advertisement through his media company about the lucrative scheme of ponzi firm which persuaded many more people to invest their hard earned money in such ponzi schemes. So also, the material has been collected indicating that the petitioner was lobbying in the Ministry of Finance, Government of India for the ponzi firm. The petitioner has also applied arm twisted method to collect money from the many ponzi firms knowing their illegal activities in the camouflage of business

transaction. His custodial interrogation is likely to throw more light regarding involvement of many other influential people in growth of the ponzi firms and the commission of offence alleged which is an economic offence wherein lacs of gullible depositors were duped. The C.B.I. has been entrusted by the Apex Court to unearth the larger angle of conspiracy and patronage of the ponzi firms by political and other influential people which allowed to the growth of the ponzi firms. The petitioner being an influential person and a journalist having connection with politicians, possibility of his using such contacts for growth of the ponzi firms is also not ruled out and the same can only be unearthed on custodial interrogation of the petitioner, as stated by the C.B.I. So, the allegation being serious in nature and the offence committed being economic offence and the petitioner is being investigated, custodial interrogation is much more fruitful as held by the Apex Court in the case of ***P. Chidambaram (supra)***, this Court is of the view that the petitioner has made out no case for his release on pre-arrest bail, more particularly when present is prima-facie not a

case where the allegations brought against the petitioner can be said to be frivolous or groundless.

17. For the discussions made hereinbefore and keeping in view the principles settled by the Apex Court, this Court finds no merit in the application under Section 438 of Cr.P.C. filed by the petitioner.

18. In the result, the ABLAPL stands dismissed.

As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021.

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S. PUJAHARI, J.

Orissa High Court, Cuttack.
The 17th day of June, 2021/MRS