

IN THE HIGH COURT OF ORISSA, CUTTACK

**BLAPL NO. 3584 Of 2021**

An application under section 439 of the Code of Criminal Procedure in connection with E.O.W., Bhubaneswar P.S. Case No.02 of 2021 corresponding to C.T. Case No.01 of 2021 pending on the file of Presiding Officer, Designated Court, O.P.I.D. Act, Cuttack.

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Maheswar Sahoo @ Sahu ..... Petitioner

-Versus-

State of Odisha (OPID) ..... Opp. Party

For Petitioner: Miss Deepali Mahapatra

For Opp. party: Mr. Bibekananda Bhuyan  
Mr. J.P. Patra  
Special Counsel

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

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Date of Order: 10.12.2021  
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**S. K. SAHOO, J.** Who does not want to have a house of his own? It is not just a dream, it is a basic need of everyone which gives him comfort, peace of mind, identity, privacy and stability where he can live with his family safely, secured, healthy and enjoy complete freedom. It gives a loving, supportive environment in

which one can grow up and discover oneself. It creates emotional attachment, familiarity with physical surroundings and enriches sweet memories. The present case is a glaring example of unfair exploitation of the depositors and mysteriously cheating them of their dreams of having their own houses.

The petitioner Maheswar Sahoo @ Sahu has filed this application under section 439 of Code of Criminal Procedure seeking for bail in connection with E.O.W., Bhubaneswar P.S. Case No.02 of 2021 corresponding to C.T. Case No.01 of 2021 pending on the file of Presiding Officer, Designated Court, O.P.I.D. Act, Cuttack for offences punishable under sections 406, 420, 467, 468, 471 and 120-B of the Indian Penal Code read with section 6 of the Odisha Protection of Interests of Depositors (in Financial Establishments) Act, 2011 (hereafter 'O.P.I.D. Act').

The petitioner moved for bail before the learned Presiding Officer, Designated Court, O.P.I.D. Act, Cuttack which was rejected as per order dated 15.04.2021.

2. On 28.01.2021 one Amiya Kumar Pattanaik of plot no.1215/1416, Khandagiri Bari, P.S.- Khandagiri, Bhubaneswar lodged the first information report before the Superintendent of Police, Economic Offences Wing, Odisha, Bhubaneswar stating therein that during the year 2016, he came to know about the

MX Infra New Citizen Housing (duplex) project located at Mouza-Uttarmundamuhan under Jatni police station developed by MX Infra Ltd. Being interested, he went to the office of MX Infra Ltd. located at N-1/298, IRC Village, Nayapalli, Bhubaneswar, where he met with the petitioner, the M.D. of MX Infra Ltd. and the petitioner discussed with the informant about the project and promised to handover the duplex within one year on completion of construction and in case of delay, the company would bear the interest. The cost of duplex was Rs.55.00 lakhs. The petitioner assured the informant by giving brochures that the said land is free from all disputes. The informant booked a duplex jointly in his own name as well as in the name of his wife Smt. Nibedita Pattnaik. The informant paid booking amount of Rs.3.00 lakhs on 15.02.2016, which was transferred from his account maintained with Corporation Bank to the account of MX Infra Ltd. Again on 16.02.2016, the informant and his wife paid Rs.6.50 lakhs, which was also paid in the name of MX Infra Ltd. account on transfer from their bank accounts. On the same day i.e. 16.02.2016 one agreement was executed between the petitioner on the one hand and the informant and his wife on the other. As per the agreement, they were supposed to pay Rs.55.00 lakhs for the house/duplex to be constructed over the land appertaining to

Khata No.384/1250, Plot No.439/3278, Area Ac.0.540 decimals (total sale Area Ac.0.040 decimals/1742 sqft.) and MX Infra Ltd. was supposed to hand over the duplex to them by 14.02.2017 and in default, the petitioner would pay the interest. It is stated that by 14.02.2017, the petitioner even did not start any construction though by that date, he had received about Rs.21.00 lakhs from the informant and his wife. By 30.04.2018, the informant and his wife paid Rs.45.00 lakhs to the petitioner after availing loan from LIC Housing Finance, but the petitioner with criminal intention to cheat them did not complete the house. The informant came to know that the petitioner collected money from other twelve intending buyers to provide duplexes in the same project and the total amount collected by the petitioner came to Rs.4,00,17,000/- (rupees four crores seventeen thousand). The petitioner neither provided the duplex/simplex till the lodging of the F.I.R. nor refunded back their money in spite of several persuasions. The informant came to know that the land meant for construction of MX Infra Ltd. (New Citizen Housing (duplex) project) was a litigated land. One Premananda Mohapatra, M.D. of M/s. Golden View Infrastructure Pvt. Ltd. had taken loan from Indian Overseas Bank (hereafter 'the Bank') against mortgaging land situated in Mouza- Uttarmundamuhan

vide Khata No.384/1254, Plot No.439/3278 (part), Area Ac.0.540 decimals. While the land was under mortgage with the Bank, Premananda Mohapatra sold the said land to the petitioner and the petitioner knowing full well that the said land had been put to mortgage, purchased the same and defrauded the investors to the tune of crores on the pretext of providing them duplexes to be constructed over the said land. Since the petitioner had purchased the land knowing full well that it was mortgaged by Premananda Mohapatra with the bank to avail loan, it gave rise to sufficient reasonable inference that the petitioner had the dishonest intention right from the very beginning to deceive the intending buyers like the informant. It is stated that the petitioner in connivance with Premananda Mohapatra deliberately and fraudulently executed sale deeds in favour of the informant and other investors and as such the accused persons committed the offence of forgery and cheating.

On receipt of such F.I.R., the Superintendent of Police, E.O.W., Bhubaneswar registered E.O.W., Bhubaneswar P.S. Case No.02 dated 28.01.2021 under sections 406, 420, 467, 468, 471 and 120-B of the Indian Penal Code read with section 6 of the O.P.I.D. Act against the petitioner, Premananda Mohapatra as well as M/s MX Infra Ltd. and directed the Deputy

Superintendent of Police Manoj Kumar Samanta of E.O.W. to take up investigation of the case.

3. During course of investigation, it was ascertained that on 23.11.2015, the petitioner in the capacity of M.D. of M/s. MX Infra Ltd. had purchased land in question i.e. Khata No.242/150, Plot No.439 (part), Area- Ac.0.540 decimals in the Mouza- Uttaramundamuhan, Jatni from M/s. Golden View Infrastructures Pvt. Ltd. represented through its M.D. Premananda Mohapatra. The petitioner floated a housing project on the said plot in the name 'New Citizen Housing (duplex) Project' and made its advertisement through his company. During February 2016, the informant came to know about the project and met the petitioner in his office at IRC Village and subsequently he booked a duplex (construction area 2200 Sqft) in the said project @Rs.55.00 lakhs. The petitioner had promised the informant to hand him over the house within one year after completing the construction works and in case of delay, the company would bear the interest.

During course of investigation, it was further ascertained that the informant booked a flat jointly in his name and in the name of his wife Smt. Nibedita Pattnaik. Initially, they paid Rs.3.00 lakhs on 15.02.2016 and Rs.6.50 lakhs on

16.02.2016 from his bank account maintained with Corporation Bank, Main Branch, Bhubaneswar to the account of M/s MX Infra Ltd. maintained with HDFC Bank, Janapath Branch. On 16.02.2016, the petitioner representing for M/s MX Infra Ltd. executed an agreement with the informant and his wife. As per the agreement, the informant supposed to pay Rs.55.00 lakhs for the house/duplex to be constructed over the land appertaining to Khata No.384/1250, Plot No.439/3278, Area- A0.540 decimals (total sale Area- A0.040 decimals/ 1742 sqft) and the company supposed to hand over the duplex to the informant by 14.02.2017 and in default, the petitioner would pay the interest. However, investigation brought out that till 14.02.2017, though the informant paid about Rs.21.00 lakhs towards cost of house, but the petitioner did not even start any construction till that date. By the date 30.04.2018, the informant had paid Rs.45.00 lakhs by availing loan from LIC Housing Finance, but the petitioner with criminal intention to cheat him, did not complete the construction of house/project.

Investigation further revealed that an amount of Rs.4,16,62,000/- has been disbursed to the account of the petitioner, M.D. of M/s MX Infra Ltd. Vide A/c. No.028401002283 and 028405007779 of ICICI Bank of Sriya Talkies Square,

Bhubaneswar, A/c. No.33891028981 and 32561507117 of State Bank of India, VIP Colony Branch, Bhubaneswar and A/c. No.50200002953851 of HDFC Bank, Janpath, Bhubaneswar for providing flats to thirteen numbers of investors including the amount of the informant. Thereafter, the petitioner absconded by locking his office and his mobile phone was found switched off. As such, the petitioner by giving false assurance to the intending purchasers, made agreement with them with an ulterior motive to misappropriate the sanctioned/disbursed amount. He misappropriated the amount without constructing the flats for which payment was made.

During course of investigation, the informant and other intending purchasers were examined and they proved the charge of cheating and misappropriation against the petitioner and the relevant documents such as money receipts issued by the company, sale agreements of Duplex/Flat executed by the petitioner in the capacity of Director of M/s MX Infra Ltd. etc. were seized and the relevant documents of the company from ROC, Odisha, Cuttack were also collected.

Investigation also disclosed that the petitioner floated advertisement to provide Duplexes to the intended buyers in his project, namely, MX Infra New Citizen Housing (duplex) project

located at Mouza- Uttaramundamuhan under Jatni police station. Being induced by the advertisement, thirteen numbers of intending purchasers, namely, 1. Amiya Kumar Pattnaik (informant), 2. Dipti Ranjan Swain, 3. Sunil Kumar Rout, 4. Sibaram Bastia, 5. Padmanav Dhal, 6. Manjulata Samanta, 7. Bedabati Chaini, 8. Sarthak Nayak, 9. Arundhati Pradhan, W/o. Santosh Kumar Pradhan, 10. Sarat Chandra Mishra, 11. Santosh Kumar Parida, 12. Kamal Kumar Dalei and 13. Birendra Kumar Behera paid an amount of Rs.4,16,62,000/- approximately for purchase of Duplex houses. The cost of the Duplexes ranges from 45 lakhs to 58 lakhs. Accordingly, the petitioner registered the sale deeds in their favours. Though the houses in all aspects were to be delivered latest by February 2017 but due to the incomplete construction of buildings, want of electricity supply, sewerage connection, construction of roads and other important amenities, the petitioner did not hand over the Duplexes as promised by him.

During course of investigation, it was further ascertained that M/s MX Infra Ltd. was incorporated on 26.09.2011 with the Registrar of Companies, Odisha, Cuttack and the petitioner was its M.D. and Biswajit Sahoo and Swarnarekha Nath were two other Directors. During the year

2015, the petitioner in the capacity of M.D. had acquired an area of Ac.0.540 decimals, Khata No.242/150 Plot No.439 (part) in the Mouza- Uttarmundamuhan which he had purchased from one Premananda Mohapatra by way of executed sale deed dated 23.11.2015. On the same plot, he started construction of MX Infra New Citizen Housing (duplex) project. It was further revealed that the petitioner knowingly executed registered sale deeds with Premananda Mohapatra even though Sri Mohapatra had mortgaged the self-same land with the Bank and obtained loan earlier. The petitioner collected deposits from thirteen investors including the informant with assurance to provide them duplexes and executed agreement with intending buyers and also issued allotment letters. As such, the petitioner though having prior knowledge about the status of land, sold the land to the duped investors with an ulterior motive by telling them that he was to provide them dispute free clear title land.

Investigation further revealed that Premananda Mohapatra was having a polymer industry in the name of M/s Maa Bimala Polymers Pvt. Ltd. incorporated in 2009. From 2010 to 2012, Premananda Mohapatra availed CC loans and Term loans of Rs.6,40,00,000/- in the name of his company M/s Maa Bimala Polymers Pvt. Ltd. and Maa Bimala Crushing by

mortgaging aforementioned properties. Due to non-payment of interest, the loan accounts became NPA on 29.06.2014. In all the above loans, actions as per SARFAESI Act were taken. All the properties mortgaged were under the process of auction. Hence, the present buyer of the land i.e. the petitioner had purchased the land from Premananda Mohapatra knowing full well that the property in question was mortgaged with the Bank, but he still preferred to purchase it from Premananda Mohapatra. It was further ascertained during investigation that the petitioner for the purpose of cheating, prepared false and fabricated documents as if the lands had the clear titles and cheated the intending purchasers after receiving their hard earned money. Thereafter, the petitioner neither refunded their invested amount nor did he hand over the completed Duplexes with clear title as promised by him. The petitioner had collected a total amount of approximately Rs.4,16,62,000/- from thirteen intending purchasers, cheated them fraudulently with a promise to provide them with duplex houses.

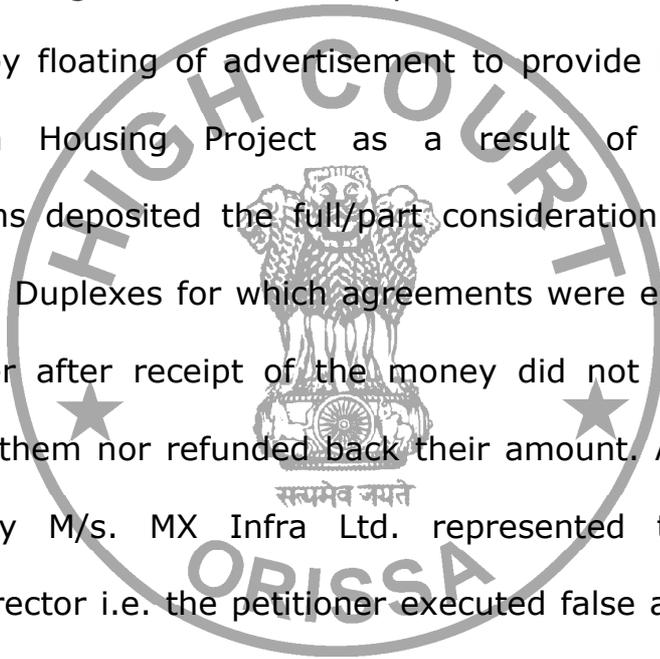
It was further ascertained during investigation that in the matter of equitable mortgage of Ac.0.540 decimals of land at Uttarmundamuhan, when the Bank got information that the said plot at Uttarmundamuhan had been sold away by Premananda

Mohapatra to the petitioner, F.I.R. was filed by Sri Mokara Prasad Rao, Chief Manager of the Bank before Jatni police station resulting in registration of Jatni P.S. Case No.135 of 2018 under section 420 of the Indian Penal Code. It was also ascertained that accused Premananda Mohapatra was charge sheeted in Jatni P.S. C.S. No.256 dated 07.08.2018 under section 420 of the Indian Penal Code. The petitioner was well aware of the fact that the land in question was under mortgage with the Bank, so he took part in the auction on 24.03.2018 which was being done by the Bank as per advertisement published in daily Odia Newspaper Prameya dated 24.03.2018 and daily English Newspaper Indian Express dated 24.03.2018.

Investigation further revealed that Premananda Mohapatra subsequently cancelled the original sale deed executed between him and the petitioner vide cancellation of sale deed no.1121904641 dated 16.10.2019 and in the said plot, substantial construction of ten numbers of houses have been made during the period 2016 to 2018 agreeing to hand over the duplex with total consideration amount from 45 lakhs to 58 lakhs and accordingly, the petitioner registered sale deeds in favour of the investors. It also revealed that the victims have also availed

loans from different financial institutions/Banks but the petitioner did not hand over the Duplexes as promised by him.

The investigating officer found prima facie evidence that the petitioner to have falsely and fraudulently represented before the prospective purchasers that the company had transferable right and title in respect of plots measuring an area of Ac.0.540 decimals of land at Uttarmundamuhan on which the duplexes namely, 'MX Infra New Citizen Housing (Duplex) Project' was being constructed. The petitioner induced intending purchasers by floating of advertisement to provide Duplexes in New Citizen Housing Project as a result of which the buyers/victims deposited the full/part consideration amount to purchase the Duplexes for which agreements were executed but the petitioner after receipt of the money did not provide the Duplexes to them nor refunded back their amount. Accordingly, the company M/s. MX Infra Ltd. represented through its Managing Director i.e. the petitioner executed false agreements, sale deeds, brochures, etc. with the buyers and issued money receipts and has not provided the Duplexes to them. The so-called documents being valuable securities have been forged by the petitioner to deceive the buyers. The petitioner knowing full well that money receipts, agreements, sale deeds, brochures,



etc. are forged documents used the same as genuine. Taking advantage of the dream of common people, the petitioner along with others collected more than four crores of rupees with promise to provide them duplexes. The petitioner neither returned the principal money or the interest to the buyers nor rendered the services to them for which money was received by him from the buyers. However, the booking amount was paid by the intending purchasers directly to the company of the petitioner and money receipts in that regard have been obtained. Investigation further revealed that the petitioner collected a sum of Rs.4,16,62,000/- from thirteen investors including the informant and misappropriated the same.

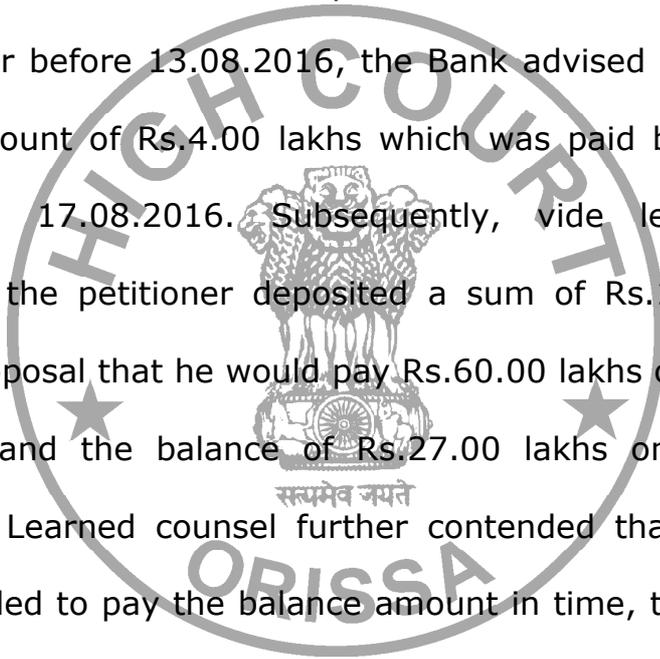
The investigating officer found that the petitioner had created a financial establishment where he received huge amount from the prospective buyers of Duplexes and after receiving the amount, he neither provided the Duplexes nor returned the deposited amount. As such, the petitioner defaulted to return the deposit or payment of interest of the said deposit and also failed to render service for which the deposits were made. The petitioner was found to be responsible for the management of the affairs of the financial establishment and liable for prosecution under section 6 of the O.P.I.D. Act. Finding

prima facie case against the petitioner, the petitioner was taken into custody on 10.02.2021

The investigating officer found prima facie evidence against the petitioner and his company under sections 406, 420, 467, 468, 471 and 120-B of the Indian Penal Code read with section 6 of the O.P.I.D. Act and accordingly, he submitted charge sheet on 08.06.2021 against them keeping further investigation open under section 173(8) of Cr.P.C. to ascertain the complicity of other accused persons, tracing the money trail, examining other investors and witnesses and seizure of incriminating documents.

4. Miss Deepali Mahapatra, learned counsel for the petitioner contended that the dispute relates to the land in Mouza- Uttarmundamuhan under Jatni Tahasil which belonged to the Managing Director of Golden View Infrastructure (P) Ltd., namely, Premananda Mohapatra which he had mortgaged to the Bank and took loan against the said property but the petitioner was unaware about such mortgage. Premananda Mohapatra executed an agreement on 21.11.2015 with the petitioner and took Rs.8.00 lakhs as advance and thereafter, the rest amount was paid to him by the petitioner through banker's cheque amounting to Rs.1,61,67,400/-. After the agreement, possession

of the land was delivered in favour of the petitioner and the petitioner started construction over the said land. While the matter stood thus, the petitioner came to know that the property in question was mortgaged by the land owner with the Bank. The Bank put the property for auction sale and after coming to know about the notice for auction, the petitioner submitted a representation on 13.05.2016 to the Branch Manager of the Bank expressing his readiness and willingness to purchase land at the cost of Rs.97.00 lakhs. As the petitioner failed to deposit the amount on or before 13.08.2016, the Bank advised him to take back the amount of Rs.4.00 lakhs which was paid by him vide letter dated 17.08.2016. Subsequently, vide letter dated 14.03.2017, the petitioner deposited a sum of Rs.10.00 lakhs and gave proposal that he would pay Rs.60.00 lakhs on or before 28.03.2017 and the balance of Rs.27.00 lakhs on or before 20.05.2017. Learned counsel further contended that since the petitioner failed to pay the balance amount in time, the property was put to e-auction and the petitioner became the successful bidder and the bank requested him to deposit 25% of the bid amount by 18.08.2017 and the balance amount within fifteen days from the date of e-auction vide letter dated 04.09.2017. Subsequently, since the petitioner failed to pay the amount, the



amount deposited by him was forfeited which was intimated to the petitioner on 07.03.2018 and then the petitioner paid Rs.25.00 lakhs and gave undertaking to pay Rs.40.00 lakhs within a period of twenty days from the date of letter dated 28.10.2019 and in total, the petitioner paid Rs.25.00 lakhs to the Bank.

Learned counsel for the petitioner further contended that in course of time, the petitioner would clear the entire outstanding dues of the Bank, moreover the petitioner has constructed the buildings over the mortgaged land after accepting deposits and the buildings are on the verge of completion and therefore, the element of deception constituting an offence of cheating is lacking. She argued that none of the offences as alleged in the charge sheet are prima facie made out against the petitioner as the land owner, namely, Premananda Mohapatra played fraud with the petitioner and even though the property in question was mortgaged with the Bank, he entered into an agreement with the petitioner and took huge amount from the petitioner. In order to wriggle out of the problem, the petitioner deposited substantial amount with the Bank and on payment of the rest amount, the land in question would be released from the Bank and thereafter, on completion of

construction, possession of the buildings would be handed over to the depositors. Learned counsel further contended that the petitioner is a permanent resident of Khodha district and there is no chance of absconding and therefore, the bail application of the petitioner may be favourably considered.

An interim application was filed by the petitioner for interim bail vide I.A. No.794 of 2021 and in paragraph nos.4 and 5 of the interim application, it is specifically mentioned as follows:

"4. That, it is pertinent to mention here that over the disputed plot, there are ten numbers of houses and two numbers of houses standing over Khata No.384/1066, Plot no.426/1210 of area Ac.0.165 dec. in mouza-Uttarmundamuhan under Jatni Tahasil which were purchased by the petitioner by registered sale deed on 25.4.2017. In the said two houses, the intending purchasers, namely, Santosh Kumar Parida and Kamal Kumar Dalei are in occupation. In the disputed land, there are ten numbers of houses and four intending purchasers, namely, Amiya Kumar Pattnaik, Sunil Kumar Rout, Dipti Ranjan Swain and Arundhati Pradhan are also in occupation over four duplexes. Since the petitioner has almost completed the duplexes, the only dispute is relating to the land which was mortgaged with

the bank by the vendor of the petitioner, which was not within the knowledge of the petitioner.

5. That, in case the petitioner would be released on bail for a period of three months, he will negotiate with the bank and will resolve the dispute with the bank.”

Mr. Bibekananda Bhuyan, learned Special Counsel appearing for the State of Odisha in O.P.I.D. Act matters being ably assisted by Mr. J.P. Patra, Advocate vehemently opposed the prayer for bail and submitted that Premananda Mohapatra, Managing Director, Golden View Infrastructure Pvt. Ltd. filed a civil case bearing C.S. No.1936 of 2018 before the Court of learned 1<sup>st</sup> Additional Civil Judge, Bhubaneswar to cancel the sale deed bearing No.11121504314 dated 23.11.2015 executed in between himself and the petitioner and the learned trial Court vide its order dated 21.08.2019 directed the Sub-Registrar, Jatni to cancel the Sale Deed dated 23.11.2015 executed by Premananda Mohapatra in favour of the petitioner.

The Investigating Officer has filed an additional affidavit dated 04.10.2021 wherein it has been mentioned in para 4 that even after taking substantial amount, the petitioner had not given possession to the four persons named in I.A. No.794 of 2021 according to the agreement. Affidavits of those

four persons have been annexed to the additional affidavit. So far as giving occupation under Plot No.426/1210, Khata No.384/1066 to the two intending purchasers, namely, Santosh Kumar Parida and Kamalakanta Dalei is concerned, it was projected that the said construction was made over two plots i.e. Plot No.426/1210, Khata No.384/1066 and Plot No.439/3278, Khata No.384/1254 and accordingly money was collected by confusing intending buyers. It is further stated that seven other intending buyers categorically stated that they were not given possession even though they had deposited substantial amount of money with the petitioner. It is argued that from the case records, it appears that the factum of mortgage of the land with the Bank was very much within the knowledge of the petitioner and only to deceive the intending buyers, the petitioner is taking such a plea of his ignorance. It is stated that since Premananda Mohapatra secured loan from the Bank by mortgaging property and due to default in repayment, the loan account became NPA, after observing all legal formalities, the Bank took symbolic possession over the property and subsequently, Bank issued e-auction/sale notice on different dates. The petitioner in the capacity of Managing Director of the company purchased the disputed land from Premananda Mohapatra in spite of knowledge

of publication of possession notice as well as auction notice. It is submitted that the intending buyers in their affidavits categorically stated that the petitioner threatened them through his henchmen to withdraw the cases, failing which they would face dire consequence.

5. This is a case of economic offence. Economic offences are always considered as grave offences as it involves deep rooted conspiracy and huge loss of public fund. Such offences are committed with cool calculation and deliberate design solely with an eye on personal profit regardless of the consequence to the community. It brings about total imbalance in the economy of the country, which has the effect of making lives of people economically weaker and miserable. Such offences are treated worse than murders. In such type of offences, while granting bail, the Court has to keep in mind, inter alia, the larger interest of public and State. The nature and seriousness of an economic offence and its impact on the society are always important considerations in such a case and those aspects must squarely be dealt with by the Court while passing an order on bail applications. (Ref: **State of Gujarat -Vrs.- Mohanlal Jitamalji Porwal and others reported in (1987) 2 Supreme Court Cases 364, Y.S. Jagan Mohan Reddy**)

**-Vrs.- CBI reported in (2013) 7 Supreme Court Cases 439 and Aswini Kumar Patra -Vrs.- Republic of India reported in (2021) 84 Odisha Criminal Reports 1.**

It is the settled law that detailed examination of evidence and elaborate discussion on merits of the case should not be undertaken while adjudicating a bail application. The nature of accusation, the severity of punishment in case of conviction, the nature of supporting evidence, the criminal antecedents of the accused, if any, reasonable apprehension of tampering with the evidence of the witnesses, apprehension of threat to the witnesses, reasonable possibility of securing the presence of the accused at the time of trial and above all the larger interests of the public and State are required to be taken note of by the Court while granting bail.

6. Adverting to the contentions raised by the learned counsel for the respective parties, it appears from the case records that the petitioner in the capacity of M.D. of MX Infra Ltd. collected more than four crores sixteen lakh rupees from thirteen investors including the informant to provide them duplexes and executed agreements with them. The construction was carried out over a mortgaged property of Premananda Mohapatra with the Bank knowingly. Whether Premananda

Mohapatra played fraud with the petitioner or not and what action the petitioner would like to take against him is not the subject matter of this case. The fact remains that the sale deed which was executed by Premananda Mohapatra in favour of the petitioner in respect of the mortgaged property has been directed to be cancelled as per the orders passed by the competent Civil Court in a Civil Suit instituted at the instance of none else than Premananda Mohapatra and direction in that respect has been issued by the Court to the Sub-Registrar, Jatni. Thus, as on date, the petitioner has got no right, title and interest over the landed properties over which he has made construction of building and obviously, he cannot now transfer any part of it completing construction over it to the thirteen investors. The Bank has taken over the possession of the property and it was placed for e-auction. Whether the petitioner would get back the landed properties after fighting litigations, whether he would succeed in his negotiation with the Bank which he has failed till now, are the matters of uncertainty. The fact remains that the investors who have invested huge amount of their hard earned money or after availing loan from different sources and were dreaming to have the houses of their own, have been duped by the petitioner on the basis of false promises

made in the advertisements floated in the newspapers and during negotiations. False agreements, sale deeds and brochures were executed by the petitioner to deceive the investors that they would be provided dispute free clear title duplexes. The investors have not yet received back the principal money or interest thereon.

During course of hearing of the bail application, when a query was made to the learned counsel for the petitioner as to whether the petitioner is ready and willing to deposit the entire money that had been taken by him from the investors in the trial Court, on instruction, the inability of the petitioner was expressed. Though it was urged that for some period, the petitioner may be granted interim bail to have negotiation with the bank, to complete the construction and to hand over the duplexes to the investors, but I find that previously the petitioner had got number of opportunities to have negotiation with the Bank when the property was put to e-auction but he remained unsuccessful. The petitioner even participated in the e-auction in respect of the property in question, became the successful bidder but failed to pay the bid amount in time for which the amount deposited by him was forfeited. With the available oral and documentary evidence, I am prima facie

satisfied that the ingredients of the offences under which charge sheet has been submitted are made out against the petitioner.

7. Without detailed examination of evidence on record and elaborate discussions on merits of the case, but considering the nature and gravity of the accusation, the nature of supporting evidence, availability of prima facie case against the petitioner, severity of punishment likely to be imposed in case of conviction and since huge amount of public money has been misappropriated and the investors have been cheated of their hard earned money of more than four crores and sixteen lakh rupees on the false assurance of providing them duplexes for which agreements were executed by the petitioner with them and when further investigation of the case is under progress and many more vital links of the case are yet to be unearthed, since it is an economic offence and reasonable apprehension of tampering with the evidence cannot be ruled out at this stage and above all in the larger interest of society, I am not inclined to release the petitioner on bail.

Accordingly, the bail application sans merit and hence stands rejected.

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.

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**S.K. Sahoo, J.**

Orissa High Court, Cuttack  
The 10<sup>th</sup> December 2021/RKMishra

