

IN THE HIGH COURT OF ORISSA, CUTTACK

BLAPL No. 502 Of 2021

An application under section 439 of the Code of Criminal Procedure in connection with CID, CB, Cyber Crime P.S. Case No.26 of 2020 corresponding to C.T. Case No.4053 of 2020 pending on the file of S.D.J.M., Bhubaneswar.

Akash Kumar Pathak Petitioner

-Versus-

State of Odisha Opp. Party

For Petitioner: - Mr. Pitambar Acharya
(Senior Advocate)

For Opp. party: - Mr. Soubhagya Ketan Nayak
(Addl. Govt. Advocate)

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Argument: 04.06.2021 Date of Order: 17.06.2021

S.K. SAHOO, J. The petitioner Akash Kumar Pathak has knocked at the portals of this Court by filing an application under section 439 of Cr.P.C. seeking for bail in connection with CID, CB, Cyber Crime P.S. Case No.26 of 2020 corresponding to C.T. Case No.4053 of 2020 pending on the file of S.D.J.M., Bhubaneswar in which first charge sheet has been submitted for offences punishable under sections 419, 420, 467, 468, 471 read with

section 120-B of the Indian Penal Code and 66-C, 66-D of the Information Technology Act, 2000 (hereafter 'I.T. Act') keeping the investigation open under section 173(8) of Cr.P.C.

2. On 18.05.2020 an email was received from one Trilochan Mohanty, Deputy General Manger-Ethics at Tata Motors Limited (hereafter 'the Company'), Jamshedpur Works, Jamshedpur as authorised representative addressed to the IG, CID, CB, Cuttack, Odisha alleging therein that it was brought to the notice of the Company on several occasions that certain unscrupulous elements were committing fraud and thereby causing harm to the reputation of the Company by contacting common public with criminal intent to defraud them and collect illicit money from them on the pretext of offering them jobs in the Company. The modus operandi of such people was to use the logo of the Company and/or TATA Group and other easily identifiable insignia. They were mentioning a name and number of a person to whom they misrepresent as an official of the Company.

It is further mentioned in the email that an alarming case was brought to the notice of the Company through one email dated 7th May 2020 16:32 highlighting the illegal and unauthorized use of brand name and well known trademark of the Company and/or TATA and impersonation as an official of the Company relating to fraudulent job offer by Mr. Vijoy Jha

from his email id vkjhamd@gmail.com enquiring about the confirmation of the post of the petitioner who is the son of an Indian Forest Officer of Odisha Cadre Mr. A.K. Pathak and that the petitioner was taking huge amount of money fraudulently from unemployed youth to secure them a job in the Company. The email also stated that the petitioner was illegally impersonating and projecting himself as MD, Tata Motors, Pune Passenger Division and CEO designate. A copy of the aforesaid email dated 7th May 2020 was attached to the email dated 18.05.2020. It is stated that the petitioner was using **(i)** A fake ID card mentioning Employee ID 88176 **(ii)** A fake visiting card with the official details as Akash Kumar Pathak, TAS, VP-Administration, 1st Floor, JRD Administrative Block, Tata Motors Limited, Telco Road, Pimpri, Pune-411018, Email ID-akash.pathak@tatamotors.com and Contact nos. 9556968888/7077608883. Copies of the said fake ID card and visiting card used by the petitioner were attached to the email for taking drastic legal actions against the culprits.

The fake ID card and visiting card indicated having 'TATA' stylized word mark as it appears on various passenger and commercial vehicles manufactured by TML. Those cards were having the 'T in circle' blue design mark which is a mark appearing on various passenger and commercial vehicles manufactured by TML by which the public identifies the

conglomerate and the various products offered. The email id of such person mentioned in the email has the word 'Tata' in it.

The person sending email found certain other evidence in support of the complaints pertaining to the petitioner that he had donated rupees five lakhs by fraudulently portraying himself as a M.D. (I/C) of the Passenger Division at Pune to the CM of Odisha at his official residence in Bhubaneswar, Odisha which can be found in the newspaper articles at <http://tathya.in/news/39145/0/Pathak-Contributes-To-CMRF> and <http://odishabarta.com/2020/04/19/3263/>. The Company also found the LinkedIn and Facebook Profile of the petitioner posing as TAS officer of Tata Motors Limited joined in 2017. A screenshot of the same was also attached to the email.

It is further mentioned in the email that the general public believed that the petitioner was representing the Company. Neither the petitioner mentioned in the email, newspaper articles, LinkedIn or Facebook that he was employed by the Company nor the Company sought for money from any prospective candidates for recruitment. It is mentioned that there was no person in the name of the petitioner working for the Company as M.D. for Tata Motors, Pune Passenger Division or CEO designate.

It is further mentioned in the email that there are clear evidence that the petitioner intentionally duped the

common public fraudulently of their money and maligning the reputation of the Company and its officials. It was apprehended that this nature of fraud would lead to larger cunning acts with public at large i.e. business establishments, officials of the government, media houses, investors, TML local and regional establishments etc. and some of the instances were apparent in the complaint itself. It is stated that the offences committed by the petitioner amounts to criminal conspiracy, cheating, fraud, forgery, impersonation, infringement of trademarks and copyrights and to engage a person with an intent to inflict monetary losses and theft of identity.

In the said email, request was made to investigate and take necessary steps to trace out the persons using the phone numbers 9556968888 and 7077608883 as mentioned by the petitioner, to trace out the culprits involved in the matter and to ensure that such activities are discontinued forthwith and appropriate steps are taken to prosecute the people behind the act of fraud, forgery and impersonation.

In the email, it is alleged that the petitioner along with other culprits cheated the company dishonestly and fraudulently by committing fraud, forgery by manufacturing Id mail and other documents to misappropriate money from public by impersonating fraudulently for which accused persons are liable to be punished for such criminal act of cheating,

impersonation, committing fraud and forgery, misappropriation of money from public and other penal provision available for commission of cyber crime and penalty stipulated under cyber crime.

3. On 23.09.2020 the complainant Trilochan Mohanty appeared at Cyber Crime Police Station, Cuttack and reported to have lodged a report on 18.05.2020 before the I.G. of Police, CID, CB, Odisha, Cuttack through email. The records were verified and it was ascertained that the copy of the report was sent to DCP, Bhubaneswar for appropriate action but no action was taken thereon as on 23.09.2020. Accordingly, on 23.09.2020 CID, CB, Cyber Crime P.S. Case No.26 of 2020 was registered under sections 419, 420, 467, 468, 469, 471 of the Indian Penal Code and 66-C, 66-D of the I.T. Act against the petitioner only.

During course of investigation of the case, the complainant Sri Trilochan Mohanty was examined and his statement was recorded who corroborated the F.I.R. story and produced some relevant documents like (i) two pages of email communication received by complainant Trilochan Mohanty in his mail id-trilochan.mohanty@tatamotors.com on 08.05.2020 from his Chief Ethic Councillor Sunil Pundlik from mail id-sunil.pundlik@tatamotors.com regarding the mail of vkjhamd@gmail.com about the fraudulent activities of the

accused, **(ii)** two pages of mail communication sent from complainant Trilochan Mohanty on dtd.08.05.2020 from his mail id-trilochan.mohanty@tatamotors.com to the mail id-vkjhamd@gmail.com regarding furnishing of information about the fraud, **(iii)** nine pages of mail communication sent from the mail id- vkjhamd@gmail.com to complainant Trilochan Mohanty on dtd.08.05.2020/09.05.2020 to his mail id-trilochan.mohanty@tatamotors.com regarding submission of more information about the petitioner, **(iv)** one LinkedIn account page of the petitioner having URL:- <https://www.linkedin.com/in/akash-kumar-pathak-a45b09157> having information written about Tata Administrative Service, **(v)** one Facebook account page of the petitioner having URL:- <https://www.facebook.com/akashkumar.pathak.5> having information written about Tata Administrative Service, **(vi)** one HP Laptop in which the complainant communicated with the source through gmail having specification Make:-HP, Sl. No.:- SCD9112R48, TATA MOTORS No.-96535 were seized under seizure list.

Basing on the seized documents correspondence made with Mobile Service Providers, it was ascertained that both the mobile numbers 9556968888 and 9556968888 belonged to one Sakir Khan of Unit-9, Bhubaneswar but the user could not be traced out. During course of investigation, correspondences were made with Face book Law Enforcement Agency for

providing User registration details of the Facebook Id:-Akash Kumar Pathak along with IP addresses details which were awaited.

During course of investigation, the Investigating Officer visited the Business Plaza situated at Pune where the petitioner was running his office at 10th Floor and hired half of the floor and opened his Tata Motors Office. The Investigating Officer also visited Gods Blessing Apartment at Pune, Waters Apartment at Pune and examined different witnesses and recorded their statements. The witnesses proved the fraudulent, dishonest, illegal and clandestine activities of the petitioner by projecting himself as the MD of Tata Motors Ltd., Pimpri Division and convincing the people that his office in Hotel West Inn was his additional office to discharge his escalating work pressure. One witness David Peter proved the meeting of the petitioner with other co-accused persons namely Pradeep Kumar Panigrahi and Sarveswar Rao and regarding their conspiracy to cheat public by using fake identity card, visiting card, mail id, Tata Motors logo etc. as genuine. The witness further stated that the petitioner and the co-accused Pradeep Kumar Panigrahi were visiting different places in Charter Flight and staying together in hotels at different places.

During course of investigation, the Investigating Officer seized some vital documents at Pune which proved that

the petitioner was running a fake office in the name of Tata Motors by using Tata Motors Logo etc. at Business Plaza. Requisition was given to Sarfaraj Maner, General Manager HR (CVBU), Pimpri, Pune to furnish detail information relating to the petitioner who was projecting himself as MD (I/c), Passenger Division, Tata Motors Ltd., Pimpri, Pune who in his reply affirmed that the petitioner was not working in the said Office at Pimpri, Pune.

On examination of some witnesses of Berhampur and peripheral area, it was proved that number of job aspirants have been cheated by co-accused Pradeep Panigrahi, who was an associate of the petitioner and he was also personally collecting money from the job aspirants and their parents/guardians by projecting himself as he would be father-in-law of the petitioner by projecting the petitioner as the MD (I/c), Passenger Division, Tata Motors Ltd., Pimpri, Pune. It was found during investigation that the innocent local people believed the version of co-accused Pradeep Panigrahi in good faith and many of them paid huge amount of money in cash as well as by account payment to the co-accused for securing a job in TATA Motors. Co-accused V. Sarveswar Rao collected resume of different job aspirants and sent the same to the petitioner and assured people for job in the Tata Motors. The job aspirants received application forms on their mails from careers@tata-

motors.org and appeared online interview. They also provided list of selected candidates and attended online training course. Further the email communications between the mail id of job aspirants with mail id careers@tata-motors.org for getting job in TATA Motors Ltd. along with 65-B Certificates from some witnesses were seized which proved the correspondence between the job aspirants and the petitioner.

Statement of accounts of victims indicates that huge amount of money transactions was made from their account to account of co-accused Pradeep Panigrahi and similarly transactions of huge amount of money were made from Pradeep Panigrahi's account to the account of the petitioner. The statement of account also corroborate the statements of victims/witnesses regarding withdrawal of huge amount of money to attend the illegal demand of accused for providing job in Tata Motors.

The Investigating Officer made correspondence with eNom, Inc, Registrar IANA, Google LLC with a request to furnish the point wise information related to domain tata-motors.org i.e. User Registration details, IP addresses, payment details etc., but the report was still awaited. Some Laptops, Mobile handset, SIM cards etc. which were related to the petitioner were re-seized by Inspector R.P. Satpathy and David Peter Metre which were originally seized from them by vigilance.

The petitioner was brought in police remand who while in police custody confessed to have created email id akash.pathak@tata-motors.org and received resumes of job aspirants from the email id of the co-accused Pradeep Panigrahi and the petitioner in presence of Government witnesses opened the email id akash.pathak@tata-motors.org created in the name of TATA Motors for impersonating himself and screenshots of each step was taken and memorandum was prepared in presence of witnesses. The screenshots and other related documents, email communication between the petitioner and co-accused Pradeep Panigrahi were also seized.

The Investigating Officer made correspondence with Google INC through mail for providing User registration details, IP address details along with MAC address of the alleged computer used at the time of registration, login details concerned IP address with login date and time in respect of the e-mail ID:- mlagopalpur2019@gmail.com for the period from creation/registration of e-mail account and the reply was received.

The Investigating Officer made correspondence with Ms. Nupur Mallick, Group CHRO, TATA Sons seeking for clarifications about the petitioner, who confirmed that the petitioner was never empanelled in TATA Administrative Service.

The seized exhibits were forwarded to the Director, State Forensic Science Laboratory, Rasulgarh, Bhubaneswar for forensic examination and opinion through learned S.D.J.M., Bhubaneswar and the report is still awaited.

The Investigating Officer found that the petitioner had committed the offence of forgery by creating forged documents like I-Card, Visiting Card in the name of Tata Motors. He has committed the offence of identity theft in the name of Tata Motors and gave an impression of being a senior functionary of Tata Motors so as to get pecuniary advantages using forged document as genuine. The petitioner along with co-accused Pradeep Panigrahi and Sarveswar Rao committed the offence of cheating by impersonation by creating forged electronic records in the form of Gmail in the name of TATA Motors. The offence was committed by the petitioner and co-accused Pradeep Panigrahi and Sarveswar Rao in a pre-planned and calculated manner for their wrongful gain by inflicting wrongful loss to the common people in the name of providing jobs to the job seekers in Tata Motors Ltd. which is a white-collar crime affecting socio-economic fabric of the State. The petitioner along with co-accused Pradeep Panigrahi and Sarveswar Rao hatched out criminal conspiracy in a pre-planned and calculated manner to dupe and induce the gullible job aspirants and their guardians in the guise of providing jobs in

Tata Motors and collected huge amount of money. The petitioner along with co-accused Pradeep Panigrahi and Sarveswar Rao fraudulently fabricated documents including electronic documents to project the petitioner as the MD (I/c) of Tata Motors, Passenger Division and received resumes of the job aspirants, sent them letters purportedly issued by Tata Motors Ltd., conducted fake online interviews and collected money from them after issuing forged selection letters. The petitioner also organized fake online training for the selected candidates. From the evidence collected, it was found that the petitioner along with co-accused Pradeep Kumar Panigrahi and V. Sarveswar Rao have committed the offences under sections 419/420/467/468/471/120-B of the Indian Penal Code read with sections 66-C/66-D of I.T. Act and accordingly, first charge sheet was submitted against them keeping the investigation open under section 173(8) of Cr.P.C.

4. The bail application of the petitioner came to be rejected by the learned 3rd Addl. Sessions Judge, Bhubaneswar in BLAPL No.1623 of 2020 as per order dated 07.01.2021 mainly on the ground that there are prima facie materials against the petitioner and the accusation against the petitioner are grave and serious and the investigation is under progress and many other factors are likely to be unearthed and that there is every

likelihood of pressurising and threatening the witnesses, if the petitioner is enlarged on bail.

5. Mr. Pitambar Acharya, learned Senior Advocate appearing for the petitioner in his own inimitable elegant style contended that while the petitioner was in judicial custody in connection with Cuttack Vigilance Cell P.S. Case No.06 dated 27.11.2020, he was taken on remand in this case since 07.12.2020 as per the orders of learned S.D.J.M., Bhubaneswar. The petitioner has been released on default bail on 27.01.2021 in the vigilance case since the vigilance police failed to submit the charge sheet within the statutory period of sixty days. In the said vigilance case, while calculating the assets of the father of the petitioner, all the bank accounts of the petitioner were taken into account. Therefore, on the one hand, one investigating wing has taken the money in the petitioner's bank accounts as his father's disproportionate assets whereas the other investigating wing has alleged that the said money in the petitioner's bank accounts was collected from job aspirants through co-accused Pradeep Kumar Panigrahi. It is argued that the prosecution is trying to mislead the Court by projecting that the petitioner was not an employee of TATA Group even though the Investigating Officer has received the appointment letter of the petitioner from the official email id of Nirav Khambati, the CEO of TATA Sons. The domain names of TATA Sons and TATA Motors cannot be

created. There has been inordinate delay of four months in registering of F.I.R. after receipt of email from Trilochan Mohanty against the petitioner and the prosecution has no answer to the same. The offences are triable by Magistrate First Class and charge sheet has already been submitted on 31.03.2021 and the petitioner has suffered pre-trial detention for more than six months. It is contended that the allegations against the petitioner are mainly to be proved on the basis of documentary evidence including electronic materials which have been seized. None of the witnesses stated to have paid any money directly to the petitioner for allegedly securing jobs in TATA Motors and there is no nexus between the job seekers/aspirants and the petitioner and thus, the element of cheating within the scope and ambit of section 415 of Indian Penal Code is not attracted. He emphasised that email contents of Trilochan Mohanty are false and frivolous and without a reasonable satisfaction reached after some investigation as to the genuineness of accusations leveled in email, the curtailment of liberty of the petitioner is a drastic abridgment of constitutional protection which is a determining factor to be taken into account in this bail application. According to Mr. Acharya, the investigating agency has used all the three investigating wings of the State i.e. Vigilance, Police Commissionerate and Crime Branch to implicate the petitioner,

his father and his would be father-in-law with false accusation. The Crime Branch has taken the petitioner on five days police remand and after five days, no further remand was prayed for by the investigating agencies. The petitioner cannot have any access to the official witnesses or to any official documents/records pertaining to the case which have been seized and as such, there is no question of tampering with the evidence.

It is further contended that while granting bail to the co-accused Pradeep Kumar Panigrahi in BLAPL No.9008 of 2020 vide order dated 24.02.2021, this Court secured the money allegedly paid by the job seekers and directed deposit of Rs.47.45 lakhs by the said co-accused before the learned Court below. The allegations made in the F.I.R., even if they are taken at their face value and accepted in its entirety do not prima facie constitute any offence against the petitioner.

It is further contended that the petitioner is a young boy of twenty six years old and he is a graduate in Mechanical Engineering and there is no criminal antecedent against him save and except the present F.I.R. and subsequent F.I.Rs which were lodged on similar accusations on account of political differences between his would-be father-in-law, a sitting M.L.A. and present ruling party of the State and the petitioner has become a victim of a well-designed conspiracy. He placed

reliance in the cases of **State of Rajasthan -Vrs.- Balchand @ Baliay reported in (1977) 4 Supreme Court Cases 308, Thulia Kali -Vrs.- State of Tamilnadu reported in (1972) 3 Supreme Court Cases 393, Kishan Singh -Vrs.- Gurpal Singh reported in (2010) 8 Supreme Court Cases 775, Joginder Kumar -Vrs.- State of Uttar Pradesh and others reported in (1994) 4 Supreme Court Cases 260 and Sheila Sebastian -Vrs.- R. Jawaharaj reported in (2018) 7 Supreme Court Cases 581.**

6. Mr. Soubhagya Ketan Nayak, learned Addl. Govt. Advocate on the other hand vehemently opposed the prayer for bail and argued that the investigation so far reveals that co-accused Pradeep Panigrahi had collected a hefty sum of Rs.88,00,000/- (rupees eighty eight lakh) from the job aspirants for providing them jobs which is the subject matter of different cases and such money was transferred to the bank account of the petitioner on different dates. It is further argued that in spite of opportunities being provided to the petitioner to produce documents to show that he was serving as M.D. (I/c) of TATA Motors and received salary as an employee of the company for his job, he failed to do so. Reliance was placed on the notification of the Finance Department, Govt. of India dated 13.05.2005 which indicates that salaries of Government servants and employees in Private/Public & Corporate Sectors are to be

paid through bank accounts. It is contended that the claim of the petitioner as an employee of TATA Group is totally false and baseless. He highlighted the reply received from the Head HR Manager, TATA Motors, Pimpri, Pune to the query made by the Investigating Officer that the petitioner was never posted as M.D. (I/c) of TATA Motors. He also placed a reply received from Ms. Nupur S Mallik, Group Chief Human Resources Officer to show that the petitioner was never in TATA Group and he was never allotted ID No.88176 and the said witness is yet to be examined during course of further investigation. It is further argued that the offences alleged against the petitioner have serious social ramifications and there is segment of larger conspiracy to cheat the innocent unemployed youth in the name of providing jobs. Answering to the point raised by Mr. Acharya relating to the seizure of bank accounts of the petitioner in the vigilance case instituted against the petitioner and his father Abhaykant Pathak, it is stated in the written note submitted on behalf of State that the bank accounts of the petitioner in which he received money from co-accused Pradeep Panigrahi have been duly investigated by the vigilance and such money was treated as personal income of the petitioner and not as the disproportionate assets of his father. While concluding the argument, it is emphasised that in case the petitioner is released on bail at this stage when further investigation on certain

important aspects is under progress, there is every likelihood of tampering with the evidence and dissuading the witnesses to speak the truth and thereby there would be derailing of the ongoing investigation. He placed reliance in the case of **Muna Patra @ Patro -Vrs.- State of Odisha reported in (2019) 74 Orissa Criminal Reports 332.**

7. Law is well settled that at the stage of granting bail, detailed examination of evidence and elaborate discussions on merits of the case need not be undertaken but when the accused is charged with economic offences, the order must reflect the reasons for arriving at a prima facie conclusion as to why bail was being granted.

In the case of **Ash Mohammad -Vrs.- Shiv Raj Singh reported in (2012) 9 Supreme Court Cases 446**, it is held that though liberty is a greatly cherished value in the life of an individual, it is a controlled and restricted one and no element in the society can act in a manner by consequence of which the life or liberty of others is jeopardized, for the rational collective does not countenance an anti-social or anti-collective act.

In the oft-quoted decision of the Hon'ble Supreme Court in case of **Balchand @ Baliay** (supra), Hon'ble Justice V.R. Krishna Iyer speaking for the Bench observed that when an accused seeks enlargement on bail from the Court, the basic rule is to grant bail, not jail, except where there are circumstances

suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like. The gravity of the offence involved which is likely to induce the accused to avoid the course of justice so also the heinousness of the crime must weigh with the Court when considering the question of bail.

At this stage, it would be appropriate to discuss the ratio laid down by the Hon'ble Supreme Court and this Court relating to the principles of grant of bail in economic offences.

In the case of **Y.S. Jagan Mohan Reddy -Vrs.- C.B.I. reported in (2013) 55 Orissa Criminal Report (SC) 825**, it is held as follows:-

"15. 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.

16. While granting bail, the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the

accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of public/State and other similar considerations."

In case of **State of Gujarat -Vrs.- Mohan Lal Jitamal Torwal** reported in **A.I.R. 1987 S.C. 1321**, it is held as follows:-

"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 colour crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest".

In the case of **Nimmagadda Prasad -Vrs.- C.B.I.** reported in **(2013) 55 Orissa Criminal Reports (SC) 833**, it was held that economic offences have serious repercussions on the development of the country as a whole. Such offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having

deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

In the case of **Ram Chandra Hansdah -Vrs.- Republic of India reported in (2015) 62 Orissa Criminal Reports 219**, I have held that economic offences are considered grave offences as it affects the economy of the country as a whole and such offences having deep rooted conspiracy and involving huge loss of public fund are to be viewed seriously. Economic offence is committed with cool calculation and deliberate design solely with an eye on personal profit regardless of the consequence to the community. 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. Similar view was taken by me in the case of **Muna Patra @ Patro** (supra), while dealing with a bail application in case of an economic offence.

Thus, economic offences are considered grave offences as it affects the economy of the country as a whole and such offences having deep rooted conspiracy and involving huge

loss of public fund are to be viewed seriously. Economic offence is committed with cool calculation and deliberate design solely with an eye on personal profit regardless of the consequence to the community. An economic offence is a well manipulated offence. It is a white collared crime which disturbs economic equilibrium in the society and the weaker section is victimised. Liberty of an individual cannot outweigh the interest of the society. An economic offence has to be viewed from a serious perspective and no lenient view can be taken. A murderer takes away the life of a person but a person committing economic offence leaves a living person dead. Discretion of grant of bail should be used in a proper and judicious manner and the Court must take note of the nature of accusation, the nature of supporting evidence, the severity of punishment in case of conviction, reasonable apprehension of tampering with the evidence, criminal antecedents etc. Of course, bail should not be denied merely because the sentiments of the community are against the accused. It is not to be denied merely because there is a prima facie case which requires trial of the issue of guilt or innocence. Its purpose is to secure attendance of the accused at the trial and non-interference with a fair and speedy trial. The purpose of bail law is not punitive but preventive. Even if there is a prima facie case for a possible conviction, bail cannot be refused, unless there is reasonable evidence before the Court

that the accused would abscond or destroy evidence or tamper with witnesses to frustrate the trial and grant of bail would be against the larger interests of the public and State and similar other considerations. More heinous is the crime, the greater is the chance of rejection of the bail, though it would always be depended on the factual matrix of the matter. 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 application.

8. The crux of matter is whether the petitioner was an employee of Tata Motors Ltd. and he was working as MD (I/c) of Pimpri Division, Pune at the relevant point of time.

According to the prosecution, from the statements of witnesses and documents collected so far particularly from the reply furnished by Sarfaraj Maner, General Manager HR (CVBU), Pimpri, Pune and Ms. Nupur Mallick, Group CHRO, TATA Sons, it appears that the petitioner was not working in Tata Motors Division Office at Pimpri, Pune and was never empanelled in TATA Administrative Service. The office which he was running in the name of Tata Motors by using Tata Motors logo etc. at 10th Floor, Business Plaza, Westin, Koregaon Park, Pune was a fake one. The petitioner also created forged documents like I-Card, Visiting Card in the name of Tata Motors. In spite of

opportunities provided to the petitioner, according to the prosecution, he failed to produce documents to show that he was serving as M.D. (I/c) of TATA Motors and received salary as an employee for his job. Since the investigation is under progress, the prosecution is expecting some more incriminating materials to be unearthed in that connection.

Though Mr. Pitambar Acharya, learned Senior Advocate filed xerox copies of certain documents regarding the appointment of the petitioner in TATA Group, at this stage it would not be proper to give any opinion on such documents. Neither the original copies were filed nor were the documents filed with an affidavit that those are the true copies of the original documents. The Investigating Officer is expected to verify the authenticity of those documents filed in Court. If the Investigating Officer has received the appointment letter of the petitioner from the official email id of Nirav Khambati, the CEO of TATA Sons as submitted by the learned counsel for the petitioner, the same will certainly be brought on record at the time of submission of final chargesheet. The petitioner will also get ample opportunity at the stage of trial to prove the original documents in that connection in accordance with law.

In view of the materials collected by the prosecution so far during course of investigation and the documents produced by the learned counsel for the petitioner, I refrain from

giving any opinion on the disputed question as to whether the petitioner was working in Tata Motors Division Office at Pimri, Pune and he was ever empanelled in TATA Administrative Service. However, after evidence is adduced from both the sides, the learned trial Court would be in a better position to evaluate the materials produced before it and to give a finding thereon.

9. Adverting to the contentions raised by the learned counsel for the petitioner regarding delay in lodging first information report, it appears that on 18.05.2020 an email was received from one Trilochan Mohanty addressed to the IG, CID, CB, Cuttack, Odisha and the report was sent to DCP, Bhubaneswar for appropriate action but no action was taken thereon. On 23.09.2020 the said Trilochan Mohanty appeared at Cyber Crime Police Station, Cuttack and reported to have lodged a report on 18.05.2020. The records were verified and when it was found that no action was taken on the email, the very same email dated 18.05.2020 was registered as F.I.R. on 23.09.2020 as CID, CB, Cyber Crime P.S. Case No.26 of 2020 against the petitioner. Therefore, here is a case of delay of four months in the registration of the F.I.R. even after getting the email against the petitioner on 18.05.2020. At this juncture, two decisions relied upon by the learned counsel for the petitioner need to be discussed.

In the case of **Thulia Kali** (supra), the Hon'ble Supreme Court held that first information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as names of eye witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained.

In the case of **Kishan Singh** (supra), the Hon'ble Supreme Court held that prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. In case, there is some delay in filing the F.I.R., the informant must give plausible

explanation for the same. Undoubtedly, delay in lodging the F.I.R. does not make the informant's case improbable when such delay is properly explained. However, deliberate delay in lodging the F.I.R. is always fatal. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal Court. The Court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an F.I.R. is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the Court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case.

The Constitution Bench of the Hon'ble Supreme Court in the case of **Lalita Kumari -Vrs.- Govt. of U.P. and Ors. reported in (2014) 2 Supreme Court Cases 1** held that the registration of first information report is mandatory under section 154 of the Code of Criminal Procedure, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not. If the inquiry discloses the commission of a cognizable offence,

the first information report must be registered. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence. The Hon'ble Court further held that in what type and in which cases preliminary inquiry is to be conducted would depend on the facts and circumstances of each case. The categories of cases in which preliminary inquiry may be made were enumerated therein.

In the case of **Jitender Kumar -Vrs.- State of Haryana reported in (2012) 6 Supreme Court Cases 204**, it is held that the settled principle of criminal jurisprudence is that mere delay in lodging the first information report may not prove fatal in all cases, but in the given circumstances of a case, delay in lodging the first information report can be one of the factors which corrode the credibility of the prosecution version. Delay in lodging the first information report cannot be a ground by itself for throwing away the entire prosecution case. The Court has to seek an explanation for delay and check the truthfulness of the version put forward. If the Court is satisfied, then the case of the prosecution cannot fail on this ground alone.

At the stage of considering bail application, it is not required to seek an explanation for delay in lodging or

registering the first information report from the prosecution and check the truthfulness of the version put forth.

Mr. Nayak, learned Additional Govt. Advocate, however, on his own tried to explain the delay in registration of F.I.R. by submitting that some kind of preliminary enquiry was going on relating to the allegations made in the email sent on 18.05.2020 by Trilochan Mohanty and when the allegations were prima facie found to be correct, then the F.I.R. was registered. It is very difficult to accept such explanation at this stage particularly when no such aspects find place in the case records submitted by him. There is nothing as to who was conducting the enquiry and what the outcome of such enquiry was. The chargesheet rather indicates that on 23.09.2020 when Trilochan Mohanty appeared at Cyber Crime Police Station to know about the status of his email dated 18.05.2020, records were verified and it was found that no action was taken on the email.

However, the prosecution can produce the materials at the stage of trial giving plausible explanation for the delay in registration of F.I.R., which is obviously to be taken into account by the learned trial Court in accordance with law. It would not be proper on the part of this Court to give any finding on such submission particularly at the stage of adjudication of the bail application. It is needless to say that even if there is some delay in lodging the F.I.R. or registration of the F.I.R., it has to be

brought on record by the defence that there was deliberate delay which was the result of malafide or actuated by extraneous considerations and it has to be further established as to whether any serious prejudice was caused to the accused thereby or it cast any doubt on the prosecution case.

10. The learned counsel for the petitioner raised a contention that one investigating wing has taken the money in the petitioner's bank accounts as his father's disproportionate assets whereas the other investigating wing has alleged that the said money in the petitioner's bank accounts was collected from job aspirants through co-accused Pradeep Kumar Panigrahi. However, in the written note submitted on behalf of State, it has been clarified that the bank accounts of the petitioner in which he received money from co-accused Pradeep Panigrahi have been duly investigated by the vigilance and such money was treated as personal income of the petitioner and not as the disproportionate assets of his father.

11. The contention raised by the learned counsel for the petitioner that there has been curtailment of liberty of the petitioner without proper investigation as to the genuineness of accusations levelled in the email, is very difficult to be accepted. Reliance was placed in the case of **Joginder Kumar** (supra) where the Hon'ble Supreme Court held that no arrest can be made in a routine manner on a mere allegation of commission of

an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. Reliance was also placed by the learned counsel for the petitioner in the case of **Sheila Sebastian** (supra), wherein it is held that the Investigating Officer is expected to be diligent while discharging his duties. He has to be fair, transparent and his only endeavour should be to find out truth.

The case records indicate that after registration of the first information report on 23.09.2020, the petitioner was taken on remand in the case on 07.12.2020. Prior to that, he was in judicial custody in connection with Cuttack Vigilance Cell P.S. Case No.06 dated 27.11.2020. During investigation, witnesses were examined and some relevant documents were seized and the I.O. also visited the office of the petitioner at 10th Floor, Business Plaza and it was revealed that the petitioner was running a fake office in the name of Tata Motors by using Tata Motors logo etc. at Business Plaza and his fraudulent, dishonest, illegal and clandestine activities by projecting himself as the MD

of the Company came to fore. Thereafter, the I.O. made a prayer before learned S.D.J.M., Bhubaneswar to take remand of the petitioner in the case, which was allowed. In view of the materials on record, it can be said that there was reasonable satisfaction of the I.O. reached after some investigation as to the genuineness and bona fides of the accusations levelled in the first information report whereafter the petitioner was taken on remand. There is nothing to show that the investigation was unfair. Consequently, the contention of the learned counsel for the petitioner on this score fails.

12. The case records indicate that in a pre-planned and calculated manner, the petitioner and the co-accused persons have incurred wrongful gain by inflicting wrongful loss to the common people in the name of providing them jobs in TATA Motors which is a white collar crime that affects socio-economic fabric of the State. According to the prosecution, the petitioner became successful in his evil mission in collecting huge amount from the job aspirants in view of the influence of local M.L.A. who is a co-accused in the case who projected the petitioner as his prospective son-in-law. The gullible job aspirants were also mesmerised as the petitioner alleged to have created forged documents and electronic records of Tata Motors, received resumes of job aspirants, conducted fake online interviews,

issued forged selection letters and organised fake online training programme for the selected candidates.

The very term 'unemployment' sounds like a death knell for the future of the youth of this nation. When an educated youth carrying certificates of Boards and Universities is drenched in rain of sorrows for non-availability of any suitable job for him and unable to show his tears to anyone even though he is crying inwardly, feeling pain in his hurting heart and tries to hide sign of sadness, instead of providing him an umbrella for weathering storms of life and playing a supportive role to let him overcome depression, if someone on the pretext of providing job, exploits the youth and dupes him of his money arranged with much difficulty and makes him falling prey to temptations of lucrative jobs, it is a cheating of highest order. It brings wrongful gain to the duper and wrongful loss to the person duped. Making false promise by an accused to the job aspirant by assuring that he would get job on payment of huge amount itself establishes one of the essential ingredients of cheating as envisaged under section 415 of the Indian Penal Code that at the time of making the promise, the accused had fraudulent and dishonest intention to deceive the job aspirant and to get gained wrongfully. According to the data collected by Centre for Monitoring Indian Economy (CMIE), the unemployment rate among educated youth is on massive rise. Needless to say, the

cases of fraudsters cheating job aspirants are also on sharp rise. These white-collar crimes, which have drastic effects, are required to be dealt with iron hands and severe punishment needs to be awarded to the culprits on proof of charges by the prosecution beyond all reasonable doubt.

13. In view of the foregoing discussions, without detailed examination of evidence and elaborate discussion on merit of the case but taking into account prima facie case of commission of act of cheating, fraud and forgery and impersonation alleged against the petitioner which is also the subject matter of further investigation and the fact that such offences are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts, further taking into account the manner in which gullible job aspirants have been allegedly duped with deliberate design keeping an eye on personal profit regardless of the consequence to the community and that there may be many more such persons who might have been duped in the name of providing jobs in a reputed company like TATA Motors which is likely to be unearthed during course of further investigation, the nature and gravity of the accusation, severity of the punishment in the event of conviction, the position and standing of the petitioner and the co-accused sitting M.L.A. who has been recently released from judicial custody, the reasonable apprehension of

tampering with the evidence and when on some important aspects the investigation is still under progress, in the larger interest of public and State, I am not inclined to release the petitioner on bail.

It is made clear that the observation made while disposing of this bail application relates to the materials collected during course of investigation so far and the findings recorded herein are for the purpose of adjudication of this bail application only. This may not be taken as an expression of opinion on the merits of the case. The learned trial Court would be at liberty to decide the matter in the light of evidence which shall come on record after it is led de hors any finding recorded in this order.

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

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S.K. Sahoo, J.