

A.F.R.



IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.7333 of 2025

Bishnupada Sethi

....

Petitioner

-versus-

***Central Bureau of
Investigation***

....

Opposite Party

For Petitioner : Mr. D. Panda, Advocate

For Opposite Party : Mr. Sarthak Nayak,
Special Public Prosecutor, CBI

CORAM: JUSTICE V. NARASINGH

Date of hearing : 18.07.2025

Date of Judgment : 28.07.2025

V. Narasingh, J.

1. Heard Mr. D. Panda, learned counsel for the Petitioner and Mr. S. Nayak, learned Special Public Prosecutor for the CBI.

2. The Petitioner is seeking pre-arrest bail in connection with R.C. Case No.17(A) of 2024 pending in the Court of learned Special Judge CBI-I, Bhubaneswar arising out of RC21720240017 of CBI, AC-II, New Delhi for commission of offence punishable under Section 7 read with Sections 8/9/10 of the Prevention of Corruption Act, 1988 (as amended in 2018) and Section 61(2) of the BNS.



3. The allegation against the present Petitioner is that the Petitioner had played pivotal role in the named accused Chanchal Kumar Mukherjee, Group General Manager, Bridge & Roof Co. Ltd. demanding and obtaining a sum of Rs.10 lakhs from one Santosh Moharana, Director, M/s. Penta A Studio Pvt. Ltd. as an illegal gratification for clearing the project bills.

4. It is the case of the CBI that on the basis of source information, a trap was laid on 07.12.2024 and the alleged bribe amount of Rs.10 lakhs was recovered from the vehicle of one Debadutta Mohapatra in the presence of the independent witnesses. The allegation against the present Petitioner, who is a Senior Indian Administrative Service Officer, is that he had acquaintance with the named accused Chanchal Kumar Mukherjee, Group General Manager, Bridge & Roof Co. Ltd. which is a Central Public Sector Undertaking during his incumbency as Secretary, SC & ST Development Department since Bridge & Roof Co. Ltd. was undertaking a projects worth Rs.37 crores of SC & ST Development Department.

It is the further case of the CBI that expensive gifts (a MacBook and a luxury watch) were received by the daughter of the Petitioner from the said Debadutta Mohapatra from whom the money, alleged to have been given as a bribe, was recovered. And, it is the case of the CBI that the Petitioner making a phone call



from the phone of named accused Chanchal Kumar Mukherjee prevailed upon the said Debadutta Mohapatra to receive bribe amount of Rs.10 lakhs. It is alleged on the basis of CFSL report that the voice in the call made to Debadutta Mohapatra matched with the voice sample of the Petitioner recorded voluntarily.

5. Learned counsel for the Petitioner, Mr. Panda submitted that the Petitioner is being roped in only because of his acquaintance with the named accused Chanchal Kumar Mukherjee. Oblivious of the fact that the same was in his official capacity as the Secretary of SC & ST Development Department and it is his further submission that the Petitioner appeared before the CBI as and when summoned, ungrudgingly cooperated even giving voice sample. Thus, considering the nature of allegations, custodial interrogation of the Petitioner is not warranted. He also submits that there is no credible material to justify the allegation that Petitioner's daughter received gifts from the said Debadutta Mohapatra.

6. Per contra, learned retainer counsel for the CBI, Mr. Sarthak Nayak, submitted that there is prima facie material to indicate that the Petitioner has actively participated in the alleged crime. He also refutes the submission that the Petitioner has cooperated with the ongoing investigation referring to the objection filed.



As such, he seeks rejection of the pre-arrest bail. Rejoinder has been filed by the Petitioner in response.

7. It is apt to note that the Petitioner along with his wife and daughter filed WP(C) No.5905 of 2025 under Articles 226 and 227 of the Constitution of India in this Court seeking following reliefs;

"..... the Petitioners seek a direction from this Court to quash the ongoing investigation initiated by the CBI pursuant to FIR No.RC2172024A0017, and further pray for return of seized materials and protection from coercive action alleging procedural illegality, harassment and violation of fundamental rights.." (Emphasized)

8. Learned counsel for the CBI draws the attention of this Court to Paragraph-8 of the judgment of this Court dated 20.06.2025 in the said WP(C) No.5905 of 2025 wherein referring to the judgment of the Apex Court in the case of **State of West Bengal vrs. Swapan Kumar Guha¹**, this Court held that "interference would be premature and inappropriate".

In Paragraph-9 of the said judgment (WP(C) No.5905 of 2025), referring to the judgment of the Apex Court in the case of **Dukhishyam Benupani vrs. Arun Kumar Bajoria²**, Coordinate Bench of this Court

¹ AIR 1982 SC 949

² (1998) 1 SCC 52



in concluding Paragraph-25 held that "The Petitioners are reprimanded for this ill-advised litigation".

Referring to the same, it is submitted by the learned counsel for the CBI, Mr. Nayak that filing of the present anticipatory bail application is itself an abuse of process of law since all the contentions which are raised in this ABLAPL were threadbare urged and duly rebutted, in the Writ Petition also at the instance of the Petitioner. And, taking note of the rival submissions, this Court came to a finding that such writ petition does not merit consideration.

9. Such submission is opposed by the learned counsel for the Petitioner, Mr. Panda.

This Court finds force in such submission of learned counsel for the Petitioner, Mr. Panda. It is also submitted that in the meanwhile, the Petitioner has assailed the said judgment by filing Writ Appeal which, is yet to be numbered.

10. It is trite that the observations/findings of the Court have to be understood in the factual background of each case and the stage at which the same have been asserted. **(Ref : Islamic Academy of Education and another vrs. State of Karnataka and others)³.**

³ (2003) 6 SCC 697 : (Paragraphs 139 - 145)

139. A judgment, it is trite, is not to be read as a statute. The ratio decidendi of a judgment is its reasoning which can be deciphered only upon reading the same in its entirety. The ratio decidendi of a case or the principles and reasons on which it is based is distinct from the relief finally



granted or the manner adopted for its disposal. (See Executive Engineer, Dhenkanal Minor Irrigation Division v. N.C. Budharaj)

140. In Padma Sundara Rao v. State of T.N., it is stated: (SCC p. 540, paragraphs 90)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board* (Sub nom *British Railways Board v. Herrington*). Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

(See also *Haryana Financial Corpn. v. Jagadamba Oil Mills*)

141. In *General Electric Co. v. Renusagar Power Co.*, it was held: (SCC p.157, paragraph 20)

"As often enough pointed out by us, words and expressions used in a judgment are not to be construed in the same manner as statutes or as words and expressions defined in statutes. We do not have any doubt that when the words 'adjudication of the merits of the controversy in the suit' were used by this Court in *State of U.P. v. Janki Saran Kailash Chandra*, the words were not used to take in every adjudication which brought to an end the proceeding before the court in whatever manner but were meant to cover only such adjudication as touched upon the real dispute between the parties which gave rise to the action. Objections to adjudication of the disputes between the parties, on whatever ground, are in truth not aids to the progress of the suit but hurdles to such progress. Adjudication of such objections cannot be termed as adjudication of the merits of the controversy in the suit. As we said earlier, a broad view has to be taken of the principles involved and narrow and technical interpretation which tends to defeat the object of the legislation must be avoided."

142. In *Rajeshwar Prasad Mishra v. State of WB*, it was held:

"No doubt, the law declared by this Court binds courts in India but it should always be remembered that this Court does not enact." (See also *Amar Nath Om Prakash v. State of Punjab* and *Hameed Joharan v. Abdul Salam*.)

143. It will not, therefore, be correct to contend, as has been contended by Mr. Nariman, that answers to the questions would be the ratio to a judgment. The answers to the questions are merely conclusions. They have to be interpreted, in a case of doubt or dispute with the reasons assigned in support thereof in the body of the judgment, wherefor, it would be essential to read the other paragraphs of the judgment also. It is also permissible for this purpose (albeit only in certain cases and if there exist strong and cogent reasons) to look to the pleadings of the parties.

144. In *Keshav Chandra Joshi v. Union of India*, this Court when faced with difficulties where specific guidelines had been laid down for determination of seniority in *Direct Recruits Class II Engg. Officers' Assn. v. State of Maharashtra*, held that the conclusions have to be read along with the discussions and the reasons given in the body of the judgment.

145. It is further trite that a decision is an authority for what it decides and not what can be logically deduced therefrom. (See *Union of India v. Chajju Ram*)."



11. In Paragraph-26 of the judgment dated 20.06.2025 in WP(C) No.5905 of 2025, Coordinate Bench of this Court had clarified that the observations therein are only for the purpose of deciding the maintainability of the said writ petition filed at the behest of the Petitioner, his spouse and daughter and reference of the Coordinate Bench to "trial" in the said paragraph has to be understood contextually.

11-A. Hence, this Court is persuaded to hold that the present ABLAPL is maintainable and accordingly shall proceed to consider the materials on record independently bereft of dismissal of WP(C) No.5905 of 2025.

12. Learned counsel for the Petitioner, Mr. Panda, submits that there is a patent incongruity in the narration of the FIR and the alleged phone call which is stated to be the basis to implicate the Petitioner. It is his further submission that he being a responsible public servant cooperated with the ongoing investigation and volunteered for recording of his voice sample. And, the Petitioner all along appeared as and when summoned. Though searches were conducted but no incriminating material has been found.

It is further stated that the accidental damage of two mobile phones being blown out of proportion by the CBI and non-mentioning of the two lockers by his wife during ongoing investigation, probing the role of



the Petitioner, is not deliberate but because of the overwhelming circumstances. And, even if the prosecution allegations of the CBI are accepted at its face value, no case under Section 7 of the Prevention of Corruption Act, 1988 is made out against the Petitioner and as such the Petitioner should not be subjected to custodial interrogation.

13. Learned counsel for the Petitioner Mr. Panda, relies on the judgments of the Apex Court in the case of **M.P. Sharma and others vrs. Satish Chandra**⁴ (para-11), **Selvi and others vrs. State of Karnataka**⁵, **Tofan Singh vrs. State of T.N.**⁶, inter alia, to canvass that the action of the CBI in recording the voice samples of the Petitioner militates against the doctrine of testimonial compulsion as envisaged under **Article 20(3) of the Constitution of India**⁷.

14. Learned counsel for the CBI relies on the judgments of the Apex Court in the case of **Devinder Kumar Bansal vs. The State of Punjab**⁸, **P. Chidambaram vs. Directorate of Enforcement**⁹, **Ritesh Sinha vs. State of Uttar Pradesh and another**¹⁰, **R.M. Malkani vs. State of Maharashtra**¹¹

⁴ (1954) 1 SCC 385

⁵ (2010) 7 SCC 263

⁶ (2021) 4 SCC 1

⁷ Article 20(3) of the Constitution of India

20. Protection in respect of conviction for offences

(1) xxx

(2) xxx

(3) No person accused of any offence shall be compelled to be a witness against himself.

⁸ (2025) 4 SCC 493

⁹ (2019) 9 SCC 24

¹⁰ (2019) 8 SCC 1



and this Court in the case of **Bishnupada Sethi & others vrs. Central Bureau of Investigation (CBI), New Delhi and others**¹², adverted to herein above.

15. The Apex Court in its order dated 21.03.2023 in the case of **Satender Kumar Antil vrs. Central Bureau of Investigation and another**¹³, have clarified that the decision of **Satender Kumar Antil vrs. Central Bureau of Investigation and another**¹⁴, shall apply in equal measure to the cases in which pre-arrest bail is being sought and held that "Anticipatory bail after all is one of the species of a bail".

16. Hence, the submissions of the learned counsel for the parties with reference to the materials on record have to be examined on the anvil of the above dictum of the Apex Court.

17. It is submitted with vehemence by the learned counsel for the Petitioner that merely because of his earlier acquaintance with one of the accused Chanchal Kumar Mukherjee, the Petitioner being made a scapegoat and being hounded and threatened with arrest though he has fully cooperated with the investigation. As already noted, it is submitted that the damage of iPhones and non-disclosure of the lockers are of no significance viewed in the background that

¹¹ (1973) 1 SCC 471

¹² (WP(C) No.5905 of 2025 disposed of on 20.06.2025)

¹³ 2023 SCC Online SC 452

¹⁴ 2022 (10) SCC 51



there is no prima facie material on record to implicate the Petitioner in the alleged crime.

18. During the course of submission, learned counsel for the CBI has filed a memo to fortify his submission that the present Petitioner was operating WhatsApp in mobile number 9xxxxxxx6 (Redacted) which is registered in the name of the co-accused Debadutta Mohapatra. The memo is culled out hereunder:

“.....in support of the arguments made during the hearing on behalf of CBI and in compliance to the Hon’ble Court’s order, it is humbly submitted that during investigation, it was revealed that the present Petitioner was operating WhatsApp via mobile number 9xxxxxxx6 (Redacted), which is registered in the name of the co-accused Debadutta Mohapatra”

The recitals in the said memorandum have been refuted by the Petitioner “as baseless”.

19. It is his further submission that there is material to indicate that the named accused Chanchal Kumar Mukherjee had met the present Petitioner just before the trap was laid and it his submission that the voice samples which are voluntarily provided matched with the call that came to one Debadutta Mohapatra from whose vehicle Rs.10 lakhs was recovered and according to the learned counsel for the CBI the same



is one of the incriminating materials against the Petitioner.

20. Learned counsel for the Petitioner referring to **Section 349 of BNSS¹⁵** submits that very recording of the voice sample is an infraction of the said statutory provisions which is in the nature of constitutional protection against self-incrimination. And, if the same is likely to be used against the Petitioner, he should have been put to notice. To fortify his submission he heavily relied on the larger Bench decision of the Apex Court in the case of ***M.P. Sharma (supra)*⁴**.

The issue which was considered in the said decision has been stated in Paragraph-3 of the said judgment which is extracted hereunder;

"3. The only substantial question, therefore, that has been raised is the one relating to Article 20(3) which runs as follows:

"20. (3) No person accused of any offence shall be compelled to be a witness against himself."

21. On a bare perusal of Paragraph-11 of the said judgment, it can be seen that the said observation was in respect of the persons against whom FIR was lodged

¹⁵ 349 BNSS. Power of Magistrate to order person to give specimen signatures or handwriting, etc.

If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Sanhita, it is expedient to direct any person, including an accused person, to give specimen signatures or finger impressions or handwriting or voice sample, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or finger impressions or handwriting or voice sample: Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding: Provided further that the Magistrate may, for the reasons to be recorded in writing, order any person to give such specimen or sample without him being arrested.



and were included in the category of the accused therein and therefore they are persons "accused of an offence".

22. It is argued that when protection for testimonial compulsion is available to a person-accused of an offence and cited as an accused that apply in a greater measure in respect of a person, who is not yet cited as an accused.

23. It is apt to note that the decision in the case of **M.P. Sharma (supra)**⁴ came up for consideration before 11 Judges Bench in the case of **State of Bombay vrs. Kathi Kalu Oghad**¹⁶. In Paragraph-16 of the said judgment, the Apex Court recorded the conclusions. In Sub-Para-7 thereof, it has been held that "to bring the statement in question within the prohibition of Article 20(3), the person accused must have stood in the character of an accused person at the time he made the statement. It is not enough that he should become an accused, any time after the statement has been made". (Emphasised).

23-A. In this context reference can also be made to the judgment of the Apex Court in the case of **Mohammed Dastagir vrs. The State of Madras**¹⁷, wherein argument as advanced in the case at hand were put-forth referring to the judgment of the Apex

¹⁶ AIR 1961 SC 1808

¹⁷ AIR 1960 SC 756



Court in the case of **M.P. Sharma (supra)**⁴. In the case of **Mohammed Dastagir (supra)**¹⁷, it was held that "though the offence had in fact been already committed by the appellant, he had not been accused of it at the stage when the currency notes were produced by him. It was also held that it could not be said that he was compelled to produce the said currency notes, because he might easily have refused to produce them, and also there was no occasion for him to invoke the constitutional protection against self-incrimination".

23-B. The correctness of finding of **Mohammed Dastagir (supra)**¹⁷ was also questioned in the case of **Kathi Kalu Oghad (supra)**¹⁶ and it was held that the judgment in **Mohammed Dastagir (supra)**¹⁷ "in our opinion lays down the law correctly".

23-C. It is further clarified in the case of **Veera Ibrahim vrs. The State of Maharashtra**¹⁸ that –

".....In order to claim the benefit of the guarantee against testimonial compulsion embodied in this clause, it must be shown, firstly, that the person who made the statement was "accused of any offence"; secondly, that he made this statement under compulsion. The phrase "accused of any offence" has been the subject of several decisions of this Court so that by now it is well settled that only a person against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course may

¹⁸ AIR 1976 SC 1167



result in his prosecution, would fall within its ambit.” (Para-6) (Emphasized)

As such, the submission that voice samples are hit by Clause-3 of Article 20 of the Constitution which deals with testimonial compulsion in the given facts of the present case and alleged infraction of Section 349 of BNSS has to be shunned, inter alia, since admittedly the voice sample was given voluntarily.

24. There is no dispute at the Bar that the Petitioner had volunteered to give the voice sample which allegedly matched with the voice in the call received by Debadutta Mohapatra, from whose vehicle the alleged money given as bribe was recovered. This Court cannot lose sight of the fact that the Petitioner in this case is a highly ranked officer of Indian Administrative Service and was well aware of his Constitutional Rights. Even bereft of such material the damage of both the iPhones of the Petitioner and omissions of his wife, who is also a working lady, to state about the two lockers which were unearthed during ongoing probe and access to the said lockers, just few days before CBI could come to know of it and the lockers having found empty by CBI cannot be brushed aside, as being urged.

25. The exact amount of Rs.10 lakhs found when the named accused was taken into custody in tune with the information which was recorded earlier on the basis



of which the investigation started also lends credence to the case of the prosecuting agencies. It is also alleged that Petitioner's daughter received a MacBook and a luxury watch worth Rs.1,46,700/- on 6.8.2024 from Debadutta Mohapatra from whom the bribe amount was recovered, as noted. Such allegation is refuted, inter alia, on the ground that there is no seizure to the said effect.

26. While dealing with the power of Section 482 B.N.S.S. (Section 438 Cr.P.C.) relating to an economic offence, the Apex Court has held in the case of **P. Chidambaram (supra)**⁹ that the anticipatory bail is not to be granted as a matter of right and it has to be granted when the Court finds that exceptional circumstances exist to resort to that extraordinary remedy.

26-A. It was further held in the self-same judgment referring to the case **Directorate of Enforcement vrs. Ashok Kumar Jain**¹⁹ that "in economic offence the accused is not entitled to anticipatory bail"

But as already noted the same has to be construed in the light of the latest decision of the Apex Court in the case of **Satender Kumar Antil (supra)**¹³.

26-B. In **Devinder Kumar Bansal (supra)**⁸, the Apex Court reiterated its deep concern with growing

¹⁹ (1998) 2 SCC 105



corruption as stated in **Neera Yadav vrs. Central Bureau of Investigation**²⁰ and held thus;

"61. Tackling corruption is going to be a priority task for the Government. The Government has been making constant efforts to deal with the problem of corruption. However, the constant legislative reforms and strict judicial actions have still not been able to completely uproot the deeply rooted evil of corruption. This is the area where the Government needs to be seen taking unrelenting, stern and uncompromising steps. Leaders should think of introducing good and effective leadership at the helm of affairs; only then benefits of liberalization and various programmes, welfare schemes and programmes would reach the masses. Lack of awareness and supine attitude of the public has all along been found to be to the advantage of the corrupt. Due to the uncontrolled spread of consumerism and fall in moral values, corruption has taken deep roots in the society. What is needed is a reawakening and recommitment to the basic values of tradition rooted in ancient and external wisdom. Unless people rise against bribery and corruption, society can never be rid of this disease. The people can collectively put off this evil by resisting corruption by any person, howsoever high he or she may be."

In such background, this Court has to decide whether the Petitioner is to be insulated by a pre-arrest bail.

²⁰ (2017) 8 SCC 757



27. In **State represented by the C.B.I. vrs. Anil Sharma²¹**, the Apex Court held thus;

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this, effective interrogation of a suspected person is of tremendous advantage in disinterring many useful information and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

28. Considering that the Petitioner is a Senior Officer in the rank of Indian Administrative Service, this Court finds force in the submission of the learned counsel for the CBI that his interrogation being “ensconced” by an order of anticipatory bail would be a

²¹ (1997) 7 SCC 187



fruitless exercise in the light of the materials unearthed.

29. It is often said that power of corruption is like a shadow, it follows those who wield power. The Petitioner undoubtedly has the power being a senior official of the Indian Administrative Service. On a conspectus of materials on record, whether corruption is his shadow merits probe unhindered and unimpeded by the exceptional remedy of pre-arrest bail.

30. Accordingly, the ABLPAL stands rejected.

Interim order dated 03.07.2025 stands vacated.

31. It is needless to state that the observations made hereinabove are only for the purpose of consideration of the Petitioner's prayer for pre-arrest bail and the same ought not to be considered as this Court expressing any opinion regarding complicity of the Petitioner which has to be probed independently.

**(V. Narasingh)
Judge**

Orissa High Court, Cuttack
Dated the 28th July 2025/Pradeep