

(1998) 11 OHC CK 0038

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 3454 of 1998

Biswajit Das

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 05-11-1998

Acts Referred:

Citation : (1999) 88 CLT 571 : (1999) 16 OCR 251 : (1999) 1 OLR 440

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Judgement

P.K. Misra, J.—By order dated 1.5.1998 passed in Criminal Misc. Case No. 622/98 while rejecting the bail application of the present petitioner, who is in custody since 23rd July, 1996. it was directed that the trial itself should be completed as expeditiously as possible preferably by end of July, 1998. It was further observed that it would be open to the petitioner to move for bail afresh if there is undue delay in disposal of the case. Thereafter, the petitioner moved the trial Court for bail, but the same having been rejected, the present bail application has been filed.

2. It is no doubt true that the offence appears to be very heinous and three persons have died in the alleged incident. While this matter was being taken up on 23.9.1998, it was indicated that the trial had been fixed to 30th October, 1998, for cross-examination of P.Ws. 20 and 21 and accordingly, the matter was directed to be listed on 3rd November, 1998. Today, learned counsel for the petitioner has produced a certified copy of the order dated 30.10.1998 of the trial Court. From the said order, it appears that P.W. 20 in spite of being served with notice did not attend the Court and as such he could not be cross- examined and N.B.W. has been directed to be issued against him. From the said order it further appears that "summons issued against P.W. No. 21 could not be dispatched due to want of service postage stamps in stock". It appears that the case has now been posted to 4.12.1998 and 5.12.1998 for the purpose of cross-examination of P.Ws. 20 and 21. It is, indeed, shocking to note that summons

against witnesses cannot be issued due to want of service postage stamp in a Court of Session in Bhubaneswar, the Capital of Orissa. Since the trial is being unduly delayed mainly due to default of the State agency and the petitioner has remained in custody for more than two years, I consider it a fit case where the present petitioner should be released on bail. Right to speedy trial is considered to be a fundamental right, but if such right is defeated by such a trivial thing as lack of postage stamp, it only reflects the sorry state of affairs. Keeping in view the above aspect, it is, therefore, directed that the petitioner shall be released on bail of Rs. 20,000/- with two sureties, each for the like amount, to the satisfaction of the Second Additional Sessions Judge, Bhubaneswar, in S.T. Case No. 27/502 of 1996. The petitioner shall attend the trial Court on each date unless otherwise permitted by the trial Court and shall report at Khandagiri Police Station everyday between 4 P.M. to 6 P.M. Any attempt to tamper with prosecution evidence shall entail cancellation of bail.

The Criminal Misc. Case is disposed of.

A copy of this order be communicated to the Chief Secretary of the State Government.

Urgent certified copy of the order may be given on proper application by tomorrow.