

(1984) 07 OHC CK 0024

In the Orissa High Court

Case No : Criminal Revision No. 215 of 1984

Dandapani Rout and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 20-07-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437(5), 439(2)

Citation : (1984) 58 CLT 167 : (1984) 2 OLR 671

Hon'ble Judges : B.K. Behera, J

Bench : Single Bench

Advocate : J.M. Mohanty, S.K. Sahoo and R. Saha, for the Appellant; A. Rath, Additional Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

B.K. Behera, J.—The petitioners are the accused persons in G, R. Case No. 25 of 1984 in the Court of Judicial Magistrate, First Class, Banpur. Some of the petitioners were released on anticipatory bail by this Court and the other petitioners were released on bail by the learned Assistant Sessions Judge, Khurda, exercising the power of the Court of Session u/s 439 of the Code of Criminal Procedure (for short, the "Code"). On an application made by the officer-in-charge of police-station stating that the petitioners had violated the conditions of the bail bonds, the learned Magistrate cancelled the bail and directed issue of non-bailable warrants of arrest against the petitioners. This order is sought to be quashed in exercise of the inherent jurisdiction of this Court.

2. I have heard the learned counsel for the petitioners and Mr. Rath, the learned Additional Standing Counsel.

3. The inherent jurisdiction of this Court is to be exercised in rare and exceptional cases and in the interest of justice.

4. In the instant case, bail has been cancelled on an application made by the Officer-in-charge of the police station without affording an opportunity to the

petitioners to show cause and of being heard.

5 Section 439(2) of the Code provides that High Court or Court of Session may direct that any person who has been released on bail be arrested and taken to custody. Section 437(5) of the Code provides :

"Any Court which has released a person on bail under Sub-section (1) or Sub-sections (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody."

The learned Magistrate could cancel bail under Sub-section (5) of Section 437 of the Code if he had granted bail to the petitioners. As bail had been granted by this Court and the Court of Session, the learned Magistrate had no jurisdiction to cancel it u/s 437(5) of the Code.

6. I would accordingly allow the revision and quash the impugned order. The non-bailable warrants of arrest issued against the petitioners shall be recalled forthwith.

7. It has been brought to my notice that two of the petitioners, namely, petitioner No. 6 Prafulla Behera and petitioner No. 8 Adikanda Behera, have been arrested and are in custody after execution of the warrants of arrest issued against them. Each of the two petitioners is to be released on a bail of Rs. 1, 000/-(rupees one thousand) with one surety for the like amount to the satisfaction of the Judicial Magistrate, First Class, Banpur.