
(2009) 11 OHC CK 0030
In the Orissa High Court

Duryodhan Sunamajhi and Others (in Jail Custody)	APPELLANT
Vs	
State of Orissa	RESPONDENT

Date of Decision : 17-11-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 380, 449

Citation : (2010) CLT 292 (Suppl Crl) : (2010) 1 OLR 47 : (2010) OLR 292 (Suppl Crl)

Hon'ble Judges : C.R. Dash, J

Bench : Single Bench

Judgement

C.R. Dash, J.—Heard.

2. One Swami Laxmanananda Saraswati and four others were, done to death on 23.8.2008 at about 7.55 P.M. at Jaleshpata Ashram by a mob of about 20/25 persons armed with guns. The present petitioners are alleged to be the principal conspirators and authors of the crime and they are accused of offence punishable under Sections 449/302/380/120-B/34 I.P.C. read with Sections 25 and 27 of Arms Act. The issue of the murder of Swami Laxmanananda Saraswati and his associates gave rise to communal tension and immediate riot in the district of Kandhamal.

3. Trial in the case has already commenced and some of the witnesses have already been examined.

4. Mr. P.C. Chhinchani, learned Counsel for the petitioners takes me through the evidence of Uttam Gauntia, Birendra Kanhar and Mahasingh Kanhar, already examined in the Court below to drive home his contentions that-

(i) There is nothing on record to connect the present petitioners with the offence alleged and the aforesaid witnesses have also turned hostile.

(ii) Though two mouser guns have been seized from the house of petitioner No. 1 Duryodhan Sunamajhi and petitioner No. 2-Munda Badamajhi there is nothing on

record to suggest that the aforesaid gruesome murder of four persons have been committed by those mouser guns seized from the houses of petitioner Nos. 1 and 2.

(iii) In absence of the materials on record to connect the present petitioners with the offence alleged it is to be held that there is no prima facie case to show involvement of the present petitioners and they are entitled to be released on bail.

5. Mr. v. Narasingh, learned Additional Government Advocate takes me through the statements of one Prabhat Panigrahi and one Gopinath Lima recorded u/s 161 Cr.P.C. He submits that the aforesaid two witnesses are the principal witnesses to show that the present petitioners are the conspirators of the gruesome crime. It is further submitted by Mr. Narasingh that Prabhat Panigrahi and Gopinath Lima have been murdered in the meantime. Showing me the statement of another witness kept in a seal cover Mr. Narasingh, learned Additional Government Advocate appeals not to divulge his name as there is apprehension of his murder too and on divulge of his name he may meet the same fate as met by witnesses Prabhat Panigrahi and Gopinath Lima. He takes me through the evidence of one Krishnama Ghadei, already examined by the trial Court to show the factum of seizure of two mouser guns from the houses of petitioner Nos. 1 and 2. Placing the post-mortem report in respect of deceased Mata Bhaktimayee and opinion of the concerned Medical Officer on the question as to whether injuries on the person of deceased Mata Bhaktimayee could have been possible by the two mouser guns (seized from the houses of petitioners Nos. 1 and 2), Mr. Narasingh, learned Additional Government Advocate submits that in view of the specific opinion of the Medical Officer to the query of the Investigating Officer to the effect that gun shot injuries on the person of deceased Mata Bhaktimayee are possible by mouser loading guns, there is nothing to doubt that the mouser guns seized from the houses of petitioner Nos. 1 and 2 have not been used in the commission of the crime. It is strenuously submitted by him that in view of the sensation attached to the case and readiness of the assailants to do away with the lives of even witnesses, it may not be proper to release the petitioners on bail when the trial is on.

6. Mr. PC. Chhinchani, learned Counsel for the petitioners oppugns submissions of Mr. v. Narasingh, learned Additional Government Advocate on the ground that Prabhat Panigrahi and Gopinath Lima having not been shown as witnesses in the Charge Sheet and statement of witness "X" without divulging his name and without supplying the statement to the petitioners in compliance of Section 207 Cr.P.C. can not be relied upon by the prosecution at any stage.

7. The contentions raised by the learned counsels for the parties cannot be answered at this stage without detail documentation of the materials on record and such detail documentation at the preliminary stage of bail is not permissible. When the trial is on, I do not deem it proper to embark upon detail documentation of the materials on record, as such an exercise by this Court may

influence the trial Court and may prejudice the parties. The submission of the learned Counsel for the petitioners to the effect that witnesses Prabhat Panigrahi and Gopinath Lima have not named petitioner No. 2-Munda Badamajhi in their statements recorded u/s 161 Cr.P.C. has got no relevance so far as the present consideration is concerned inasmuch as there is materials to show that one of the mouser gun was seized from his house.

8. Whether statements of Prabhat Panigrahi and Gopinath Lima (alleged to be murdered) has got relevance and is admissible u/s 32 of the Evidence Act is a question to be decided by the trial Court. Similarly, whether the prosecution without complying with Section 207 Cr.P.C. and supplying the statements of some of the witnesses can examine them in the trial is to be addressed by the trial Court at appropriate stage. But statements of Prabhat Panigrahi and Gopinath Lima and witness "X" can very well be taken into consideration so far as question of bail of the petitioners is concerned without being bothered by the question of admissibility, relevance or otherwise of such statements asserted to be recorded by the Investigating Officer u/s 161 Cr.P.C. inasmuch as there is nothing on record to come to a prima facie conclusion that those materials/statements cannot at all be used as legal evidence at the time of trial.

9. Taking into consideration the facts and circumstances in its entirety, I am not inclined to exercise my discretion u/s 439 Cr.P.C. in favour of the petitioners at this stage.

10. The BLAPL is accordingly dismissed.

A free copy of this order be given to the learned Addl. Government Advocate, as prayed for.