

(2001) 08 OHC CK 0021

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 3242 of 1999

Gouranga Pradhan

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 01-08-2001

Acts Referred:

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

Citation : (2001) 2 OLR 580

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

Bench : Single Bench

Advocate : S.N. Sahoo and R.K. Mohanty, for the Appellant; Manoj Kr. Mohanty, State Counsel, for the Respondent

Judgement

P.K. Tripathy, J.—Heard.

2. Both the applications are u/s 439(2), Cr.P.C. for cancellation of bail granted to the opposite party Nos. 2 to 17 in Crl. Misc. Case No. 3242 of 1999 and opposite party Nos. 2 and 3 in Crl. Misc. Case No. 4539 of 1999 is with respect to bail granted to the accused persons in G.R. Case No. 2667 of 1999 of the Court of S.D.J.M., Puri arising out of Brahmagiri P.S. Case No. 26 of 1999 involving the offences Under Sections 147, 148, 302/149, I.P.C. Both the applications are heard analogously and disposed of by this common order which shall abide the result in both the cases.

3. Upon perusal of the record and after hearing learned counsel for both the parties, this Court finds that except in the case of Susanta Kumar Maharathi S/o. late Pravakar who figures as opposite party No. 2 in Crl. Misc. Case No. 4539 of 1999 the lower Court did not commit any illegality in granting, bail to the other accused/opposite party members. So far as opposite party No. 2 Susanta Kumar Maharathi is concerned, he was allowed to go on bail as per the order of the learned 1st Addl. Sessions Judge, Puri passed on 6.9.1999 in Crl. Misc. Case No. 142/544 of 1999. Learned Addl. Sessions Judge after noting the facts, allowed the said opposite party No. 2 to go on bail simply because he was in custody

since 6.3.1999. While learned 1st Addl. Sessions Judge took note of the fact that the bomb thrown by the said Susanta resulted in the death of the deceased constituting an offence u/s 302, I.P.C. he could not have equated him with the co-accused persons who were the members of the unlawful assembly and could not have regarded detention in custody since 6.3.1999 as the sole reason to allow him to go on bail. The discretion vested with the Court of Session should not have been invoked so irrationally and casually when the offence involved is u/s 302, I.P.C. Apart from that, the admitted position in the Case diary is that the unfortunate death of the deceased was as an outcome of group rivalry between the parties in the village. Even while allowing opposite party No. 2 to go on bail proper conditions were also not imposed by him. viz. not to indulge in any other crime or criminal case and to maintain peace while on bail and not to influence or terrorise the prosecution witnesses. Therefore, this Court observes that learned 1st Addl. Sessions Judge, Puri failed to discharge his duty properly while allowing the opposite party No. 2 Susanta to go on bail in the aforesaid manner.

4. This Court observes that when the offence alleged against the said opposite party No. 2 (Susanta) *prima facie* makes out an offence u/s 302, I.P.C. for killing an innocent woman and when after investigation charge-sheet had already been filed, mere detention of the opposite party No. 2 in jail custody for about six months could not have been regarded as a valid or compelling reason to allow the said opp. party No. 2 to go on bail in the above noted manner. Court of Session being posted with senior Judicial Officers should adjudicate bail application with due regard to the nature and gravity of the offence, the manner in which it was committed, the punishment prescribed for the offence, the facts and circumstances relating to the occurrence vis-a-vis personal liberty of the accused. Without making due consideration of all such relevant facts order on a bail application is hazardous. It is hoped that learned 1st Addl. Sessions Judge, Puri shall make due consideration of such aspects while considering bail applications in future.

A copy of this order be communicated to the concerned presiding officer for his guidance.

5. Be that as it may, the petitioner has not made specific allegations of any overt act by any of the opposite party members/ accused persons who have been allowed to go on bail save and except making omnibus statement that after being released on bail accused persons are giving threats and terrorising the petitioner and other witnesses. Learned counsel for opposite party members states that in the absence of supervening circumstance bail granted in favour of opposite party No. 2 may not be cancelled even if learned 1st Addl. Sessions Judge did not pass a proper order while allowing the said opposite party No. 2 to go on bail. He further states that any condition which this Court deem fit and proper be imposed and the opposite party No. 2 shall undertake and abide by that condition.

6. In a preceding paragraph this Court has already observed that the bail orders

relating to the other opposite party members do not suffer from any illegality. It has also been found regarding absence of any supervening circumstance. Hence, the application u/s 439(2), Cr.P.C. with respect to all the accused/ opposite party members in both the applications except the opposite party No. 2 in Criminal Misc. Case No. 4539 of 1999 stands rejected. So far as opposite party No. 2 Susanta is concerned, keeping in view the above noted contention of learned counsel for the opposite party, this Court allows him to continue on bail, even if granted illegally, if he shall execute further bonds with his surety undertaking therein that (i) he shall not indulge in any other crime or criminal case while on bail in the said G.R./Sessions case; and (ii) he shall not influence or terrorise the prosecution witnesses in any manner whatsoever. Such conditions are in addition to the conditions imposed by the 1st Addl. Sessions Judge while allowing him to go on bail. He shall execute such bail bonds with his sureties by 14.8.2001 before the Court where the case is pending now. In the event of his failure to execute such bonds in time the concerned presiding officer shall issue non-bailable warrant of arrest and detain him in judicial custody treating this order as the order of cancellation of his bail.

Both the criminal misc. cases are disposed of accordingly.