

(1975) 09 OHC CK 0033

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 142 of 1975

Hareram Satpathy

APPELLANT

Vs

Tikaram Agarwalla and Others

RESPONDENT

Date of Decision : 18-09-1975

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 167, 439, 439(2)

Maintenance of Internal Security Act, 1971 — Section 3(1)

Penal Code, 1860 (IPC) — Section 120B, 147, 148, 149, 302

Citation : (1975) 41 CLT 1216

Hon'ble Judges : S. Acharya, J

Bench : Single Bench

Advocate : H.B. Swain and A.K.J. Mohapatra, for the Appellant; B.L.N. Swamy, A.S.C., P. Palit and J. Patnaik, for the Respondent

Final Decision : Allowed

Judgement

S. Acharya, J.—This petition has been filed on behalf of the informant in the Bolangir P.S. Case No. 281/71 on which G.R. Case No 437/74 was registered. By this miscellaneous petition u/s 439(2), Code of Criminal Procedure it is prayed that the bail granted in favour of the opp. parties 1 to 4 by the Sessions Judge, Bolangir on 1-2-1975 in Criminal Misc. Case No. 15-B of 1975, may be cancelled. The order releasing the said opposite parties on bail was passed as per the provisions of proviso (a) to Section 167 of the New Code of Criminal Procedure as the police did not file the charge sheet in the case within sixty days of the arrest of these accused persons.

2. On the information lodged by the Petitioner in this case in the Balangir Police station about the murder of his brother Parsuram Satpathy in the town of Bolangir, Bolangir P.S. Case No. 281/74 was registered against the opposite parties and six others under Sections 147, 148, 302, 149 and 120-B, Indian Penal Code, and the opposite parties and two other persons were arrested by the Police. The bail applications made on behalf of the said arrested persons were

rejected by the Subdivisional Judicial Magistrate. Thereafter the arrested persons moved the learned Sessions Judge who rejected the bail applications in respect of the opposite parties but granted bail to the other two arrested persons on the ground of their tender age. The opposite parties thereafter moved this Court, in Criminal misc. Case No. 410/74 and Criminal misc. Case No. 412/74. for their release on bail, but- this Court rejected their prayer to that effect on the finding that there was a prima facie case of murder against these persons. Opposite party No. 1 filed Criminal Revision No. 546/74 before this Court against the order remanding the accused to custody and the said revision was dismissed. Thereafter as charge sheet of the case was not filed till 30-1-1975 opposite parties 1 to 4 filed an application for their release on bail under proviso (a) to Section 167 of the New Code of Criminal Procedure before the learned Subdivisional Judicial Magistrate, Bolangir. The Public Prosecutor on that date submitted that the charge sheet would be filed in course of that day, but the same was not filed on that date or even on the next day. So opp. parties 1 to 4 moved the Sessions Judge, Bolangir u/s 439. Criminal Procedure Code, and the Sessions Judge by his order dated 1-3-1975 in Criminal misc. Case No. 15-B of 1975 released the opposite parties on bail as per proviso (a) to Section 167, Criminal Procedure Code.

3. The charge sheet in the case, as now stated, was filed on the 10th February, 1975. This charge sheet is against only six persons including Dhobei Podh and Gunanidhi Ghasi, respectively opposites 3 and 4 in this miscellaneous case. Of the other four accused persons charge-sheeted in this case accused Prafulla Bhoi and Sugyan Sandh have been released on bail on the ground of their tender age. The Petitioner in this petition does not pray for the cancellation of their bail.

4. Two other charge-sheeted accused persons, namely Premlal Suna and Sagyna Pruseth have not been released on bail and their petition for bail to this Court also has been dismissed on the finding that they actively and directly associated themselves in this "very gruesome and deliberate" murder.

5. The Petitioner by this petition prays for the cancellation of bail in respect of the charge-sheeted accused persons Dhobai Podh and Gunanidhi Ghasi (opp. parties 3 and 4 respectively in this petition) and two other persons, viz. Tikaram Agarwala and Jayanarayan Tripathy (opposite parties 1 and 2 respectively in this petition). Though the names of opposites parties 1 and 2 are included amongst the accused persons in the F.I.R. and also in the complaint petition filed in connection with this murder case, they have not been charge sheeted by the police.

6. It is now stated that the Court below has directed judicial enquiry on the above -mentioned complaint, and I do not know if by now the report has been submitted or not and what further order, if any, has been passed by the Court below in connection with this matter. On the facts stated above, until now apart from the allegations in the F.I.R. and the complaint petition there is at present nothing before me to say that a prima facie case has been made out against

opposite parties 1 and 2, and they should be taken to custody. The truth of the allegations made against them will be evident on the judicial enquiry and on the evidence to be adduced at the trial of the case. In the miscellaneous petition certain things are stated and Mr. Swain states certain things on instruction from his client. Mr. Swain submits that if the 161 and 164 statements already recorded are called for and examined in this Court the truth of the allegations made against opposite parties 1 and 2 in the complaint petition and in the F.I.R. can very well be ascertained. On hearing the counsel for both the parties I deem it proper and expedient to allow the Court below to examine this matter for itself on all the facts, circumstances and materials before it. The judicial enquiry may furnish further materials on the matter, and the Magistrate entrusted to enquire into the matter must properly enquire into the matter and submit his report within as short a time as possible.

On the above considerations direct that the Court below shall consider the matter relating to the cancellation of bail of opposite parties 1 and 2. The Petitioner also may move the Court below in this matter and can place before it any material relevant for the consideration of this matter.

7. Accused Dhobei Podh and Sunanidhi Ghasi (opposite parties 3 and 4 respectively) are, as stated above, two of the six charge-sheeted accused persons in this case. The very fact that the police has filed the charge sheet against - these accused persons in this murder case indicates that a prima facie case has been made out on police investigation against these two accused persons. It need not be stressed that the murder in question was a gruesome and deliberate murder. The finding of a prima facie case for a charge u/s 302, Indian Penal Code against these two accused persons is by itself sufficient to annul the order of bail in favour of these two accused persons, and to commit them to custody till the disposal of the case. Two other charge sheeted accused persons, viz. Premial Suna and Jagyna Pruseth, are in custody, and the Court below and this Court rejected their prayer for bail as stated above in Appendix 1 to the miscellaneous petition it is stated that accused Dhobei Podh, apart from being an accused in this murder case, is implicated also in C.R. Case No. 29/74 u/s 32-4/34 Indian Penal Code, Resinga P.S. Case No. 11/74 u/s 147/323 Indian Penal Code and in G.R. Case No. 425/74 u/s 324/34 Indian Penal Code, all in the Court of the Subdivisional Judicial Magistrate, Bolangir. He is also being proceeded against at the instance of the State in two proceedings u/s 107, Criminal Procedure Code being Criminal misc. Case No. 9/74 and Criminal misc. Case No. 34/74. The deceased murdered in this case had instituted a proceeding u/s 107, Code of Criminal Procedure against this accused in 1972 (Crl. Misc. Case No. 18/[72]). Besides being implicated in the above-mentioned cases, it is also stated on affidavit that the Superintendent of Police, Bolangir recommended his detention under the provisions of the Maintenance of Internal Security Act. The true copy of the report of the Superintendent of Police dated 4-6-1973 to the District Magistrate, which is attached as Appendix-11 to this miscellaneous petition, shows that several accused persons named in that report including this

accused, Dhobei Podh, committed various illegal acts which "gave rise to a large scale lawlessness and disorder in public life whereby the normal life in the Bolangir town was disrupted", and because of their such activities "the peace and tranquillity in the area" were badly affected. Accordingly, to "prevent any breakdown of public order in the Bolangir town" he recommended that atleast this accused and four others named therein should be detained u/s 3(1)(ii) of the Maintenance of Internal Security Act in order to curb their "dangerous activities".

On the above materials on record I deem it just and proper to annul the order of bail in favour of accused Dhobei Podh.

8. With regard to accused Gunanidhi Ghasi it is stated in Appendix 1 to the miscellaneous petition that he is implicated in G.R. Case No. 410/72 under Sections 323, 341 and 149. Indian Penal Code and also in G.R. Case No. 29/74 u/s 374/34. Indian Penal Code both pending in the Court of the Sub divisional Judicial Magistrate, Bolangir. He is also proceeded against a proceeding u/s 107, Criminal Procedure Code. (Cr. misc. Case No. 9/74) at the instance of the State. On a consideration of the above materials and the fact that he had been charge-sheeted by the police for an offence u/s 302, Indian Penal Code, I consider that this accused also should not be allowed to remain on bail.

9. In the result, therefore, the order of bail in favour of accused Dhobei Podh and Gunanidhi Banchhor alias Ghasi (respectively opposite parties 3 and 4 herein) is hereby annulled. They should surrender to their ban bonds immediately, or else the Court should immediately take steps to get them arrested and commit them to custody till the disposal of this case.

10. The Court and the enquiring Magistrate should take prompt action in all matters relating to this case. Such matter do not brook any delay. The orders, directions and observations made above be strictly observed.

11. The miscellaneous petition is partly allowed.