

(2021) 09 OHC CK 0088
In the Orissa High Court
Case No : Criminal Appeal No. 212 Of 2018

Jayaprakash Pati And Others

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 21-09-2021

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120B, 302
Evidence Act, 1872 — Section 27

Citation : (2021) 09 OHC CK 0088

Hon'ble Judges : Dr. S. Muralidhar, CJ;B.P. Routray, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Misc. Case No.515 of 2018

1. This is an application for bail on behalf of Appellant Nos.4 and 5, i.e. Adi @ Adikanda Sahu (Appellant No.4) and Jubaraj Bhoi (Appellant No.5). The appeal arises out of Sessions Case No.47/24/11 of 2013-16. Along with three other co-accused these two Appellants were convicted by the Sessions Court by the judgment and order of conviction dated 21st February, 2018 for the offences punishable under Section 302 read with 34 I.P.C. and 120-B I.P.C. and sentenced to undergo imprisonment for life and to pay a fine of Rs.25,000/-, in default to undergo rigorous imprisonment for six months each for the both sets of offences.

2. It is stated that both these Appellants have been in custody since 21st January, 2013.

3. Mr. Panda, learned counsel for the Appellants at the outset points out that, as has emerged from the deposition of the investigating officer (I.O) (P.W.26), neither of these Appellants has any criminal antecedents.

4. He points out that this is a case based on circumstantial evidence. As far as these two Appellants are concerned, the only evidence against them is in the form of a statement made by Appellant No.2 purportedly under Section 27 of the

Indian Evidence Act. He points out that even this appears to be doubtful since the statement was purportedly made on 23rd January, 2013 whereas the said Appellant No.2 was shown to have been arrested on 27th January, 2013. Further he points out that his statement was to the effect that these two Appellants were seen along with other accused in a Xylo vehicle but even after the vehicle was seized no blood stains or any other incriminating piece of evidence was found from the vehicle.

5. Mrs. Saswata Patnaik, learned Additional Government Advocate points out that the complete chain of circumstances was proved by the prosecution. She however did not contest the submission that the only piece of evidence vis-à-vis these two Appellants was the so-called statement made by the Appellant No.2.

6. Having considered the above submissions and without expressing any final opinion at this stage, the Court is of the view that both these Appellants have made out a case for being enlarged on bail. It is seen that both of them have been in custody for more than 8 years and it is unlikely that the present appeal will be taken up for hearing in the immediate future.

7. For the aforementioned reasons both these Appellants, i.e. Appellant No.4 - Adi @ Adikanda Sahu and Appellant No.5 -Jubaraj Bhoi are directed to be enlarged on bail during pendency of the appeal subject to the terms and conditions to be incorporated in the order of the trial Court.

8. The Misc. Case is accordingly disposed of.

9. An urgent certified copy of this order be issued as per rules.