
(2008) 01 OHC CK 0024
In the Orissa High Court

Kalyan Raj Pandit @ Kalyan Pandit

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 15-01-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401, 438
Penal Code, 1860 (IPC) — Section 381

Citation : (2008) CLT 407 (Suppl CrI) : (2008) 1 OLR 428 : (2008) OLR 407 (Suppl CrI)

Hon'ble Judges : Pradip Mohanty, J

Bench : Single Bench

Judgement

Pradip Mohanty, J.—Heard Mr. Ragada, learned counsel for the petitioner, and Mr. Behera, learned Addl. Govt. Advocate.

This is an application u/s 397 read with Section 401 Cr.P.C. with a prayer to set aside the order dated 01.06.2007 passed by the learned S.D.J.M.(S), Cuttack in G.R. Case No. 22 of 2007 taking cognizance against the petitioner u/s 381 IPC and issuing NBW against him.

2. Learned counsel for the petitioner submits that the petitioner was granted anticipatory bail by this Court in BLAPL No. 512 of 2007 by order dated 13.02.2007. In the said order, it was directed that the bail so granted shall remain operative till submission of final form. Charge-sheet was filed on 01.06.2007 u/s 381 IPC and the learned S.D.J.M. while taking cognizance under the above section issued NBW against the petitioner, which is hit u/s 438(3) Cr.P.C.

3. Perused the certified copy of the order dated 13.02.2007 passed in BLAPL No. 512 of 2007 and the provision of Section 438(3) Cr.P.C. which says that if a Magistrate taking cognizance of an offence decides that warrant should be issued in the first instance against an accused person, he shall issue bailable warrant in conformity with the direction of the Court u/s 438(1). In the instant case, the accused-petitioner granted bail u/s 438(1) Cr.P.C. As such, the learned

Magistrate should not have issued NBW against the accused-petitioner in the first instance. Therefore, this Court directs the learned S.D.J.M. (S), Cuttack to modify the order dated 01.06.2007 so far as it relates to issuance of NBW and pass necessary order in consonance with the provisions of Section 438(3) Cr.P.C.

4. With the above observation and direction, the CRLREV is disposed of.

Urgent certified copy of the order be granted as per rules.