

(1999) 08 OHC CK 0036

In the Orissa High Court

Case No : Criminal Miscellaneous Case No's. 164 of 1998 and 4030, 4077 and 4078 of 1997

Manoj Kumar Mishra

APPELLANT

Vs

Indramani Panigrahi and Others, Pandu alias Pandulal Dharua and Another, Akrura Nial and Others and Sanjeeb Panda and Others

RESPONDENT

Date of Decision : 10-08-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439(2)
Penal Code, 1860 (IPC) — Section 147, 148, 307, 308, 323

Citation : (1999) 88 CLT 590 : (1999) CriLJ 4369 : (1999) 17 OCR 339 : (1999) 2 OLR 302

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

Bench : Single Bench

Advocate : Addl. Standing Counsel for R.K. Patnaik, J. Patnaik, H.M. Dhal, A.A. Das, B. Mohanty, T.K. Patnaik, S. Das and R. Rath, for the Appellant; D.P. Dhal, K. Rath, D.R. Patnaik, P.K. Routray, D.K. Das, H.K. Behera and A.K. Acharya, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Patra, J.

1. These four cases u/s 439(2) of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") have been filed by Manoj Kumar Misra, the informant in Komna Police Station Case No. 2 dated 25.1.1997 corresponding to G.R. Case No. 22 of 1997 on the file of the S.D.J.M., Nawapara Under Sections 147 148 323 324 325 307 and 308 read with Section 148 IPC, praying for cancellation of bail granted to eight opposite parties in Cri. Misc. Case No. 164/98, one opposite party in Cri. Misc. Case No. 4030/97, three opposite parties in Cri. Misc. Case No. 4077/97 and thirteen opposite parties in Cri. Misc. Case No. 4078/97, alleging that the said opposite parties were illegally granted bail by the Sessions Judge, Kalahandi-Nawapara and that the opposite parties are misutilising the liberty granted to

them by terrorising the witnesses in the case.

2. All the four cases have been heard together and are disposed of by this common judgment.

3. According to the petitioner, on 25.1.1997 at about 4 a.m. while the petitioner and deceased Byasadev Pradhan along with some others were preparing for their journey to Nrusinghanath for picnic, all the aforesaid opposite parties and their companions came in a jeep being armed with deadly weapons like Thenga, Lathi and Pharsa and attacked the informant's party causing severe injuries to the informant and deceased Byasadev Pradhan and the latter succumbed to the injuries in Burla Medical College-Hospital on 28.1.1997. The informant lodged FIR at the Komna Police Station and after completion of investigation the I.O. submitted charge-sheet against thirty accused persons including the present opposite parties who have been committed to the Court of Session in S.C.No. 62 of 1997.

4. According to the petitioner, the learned Sessions Judge illegally granted bail to the eight opposite parties in Crl. Misc. Case No. 164/98 by the impugned order dated 17.11.1997, three opposite parties in Crl. Misc. Case No. 4077/97 by the impugned order dated 23.8.1997. one opposite party in Crl. Misc. Case No. 4030/97 by the impugned order dated 14.5.1997 and thirteen opposite parties in Crl. Misc. Case No. 4078/97 by the impugned order dated 23.3.1997.

5. All the charge-sheeted accused persons have been committed to the Court of Session by the learned S.D.J.M., Nawapara and Sessions Case No. 62/97 has been registered against them. It is alleged by the petitioner that grant of bail to the opposite parties in all the aforesaid four cases was illegal and the learned Sessions Judge ought not to have released them on bail and the opposite parties are misutilising the liberty granted to them. Hence, the petitioner has prayed for cancellation of bail of the aforesaid opposite parties.

6. Heard Mr. H. M. Dhal for the petitioner, Mr. D. P. Dhal, for the accused-opposite parties and Mr. R. K. Patnaik, learned Additional Standing Counsel for the State. Learned counsel for the petitioner took me through the impugned orders dated 14.5.1997, 17.11.1997 and 23.8.1997 passed by the learned Sessions Judge and strenuously urged for cancellation of bail granted to the accused-opposite parties, submitting that grant of bail in all the aforesaid four cases was illegal and that the opposite parties, after being released on bail, are misutilising the liberty granted to them by terrorising the witnesses.

7. In support of his contention, the learned counsel for the petitioner placed reliance on the decisions reported in Chhaila Pradhan and State of Orissa Vs. Bansidhar Pradhan and two Ors. and Bhagaban Pradhan and Others, and Subrat Kumar Mishra Vs. Subhendu Mishra @ Tuku Mishra, . In the first case it has been held that bail granted illegally or improperly by wrong and arbitrary exercise of judicial discretion can be cancelled even if there is absence of supervening circumstances against the accused after the grant of bail. In the second case it

has been held that bail granted by the Sessions Judge by making an unreasonable and improper assessment of evidence on record and on an unsatisfactory ground, i.e. illness of the mother specially when earlier application had been rejected by the same Court may be cancelled.

8. Mr. D.P. Dhal, learned counsel appearing for the accused opposite parties strenuously refuted the contention of the learned counsel for the petitioner contending that grant of bail to the above opposite parties cannot be said to be illegal and that the opposite parties have never misutilised the liberty granted to them and have ever terrorised the witnesses in the case. He has also contended that the report of the Superintendent of Police, Nawapara reveals that the opposite parties have never terrorised the witnesses in the case and have also never misutilised the liberty granted to them. He has further submitted that even if it is found that grant of bail was illegal or unjustified, this Court should not interfere with the same when the liberty granted to the opposite parties has never been misutilised.

9. In support of his contention, learned counsel for the opposite parties placed reliance on the decision reported in State (Delhi Administration) Vs. Sanjay Gandhi, wherein it has been held as follows:

"Rejection of bail when bail is applied for is one thing, cancellation Chhaila Pradhan and State of Orissa Vs. Bansidhar Pradhan and two Ors. and Bhagaban Pradhan and Others, of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and, large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial, to allow the accused to retain his freedom during the trial. The fact that prosecution witnesses have turned hostile cannot by itself justify the inference that the accused has won them over. The objective fact that witnesses have turned hostile must be shown to bear a causal connection with the subjective involvement therein of the accused. Without such proof, a bail once granted cannot be cancelled on the off chance or on the supposition that witnesses have been won over by the accused. Inconsistent testimony can no more be ascribed by itself to the influence of the accused that consistent testimony, by itself, can be ascribed to the pressure of the prosecution."

He has also placed reliance on the decisions reported in 71(1991) CLT 208 (Parakhita Pradhan v. Bairagi Pradhan) (1989) II OLR 290 (Prafulla Kumar Pradhan v. Pabancswar Subudhi and Ors.) (1997) 12 OCR 512 (Chaitanya v. Paban) and 34 (1992) OJD 555 (State of Orissa v. Malaya).

10. In view of the decision of the apex Court reported in State (Delhi Administration) Vs. Sanjay Gandhi, and keeping in view the report of the Superintendent of Police that the opposite parties have not misutilised the liberty granted to them, expediency will not demand cancellation of bail granted to the

opposite parties in the aforesaid four cases. All the four Criminal Misc. Cases are therefore found to be devoid of any merit and are liable to be and are hereby rejected. The interim order dated 23.3.1998 in Criminal Misc. Case No. 164/98 stands vacated. The learned Sessions Judge is directed to dispose of the Sessions Case expeditiously.

All the Criminal Misc. Cases are accordingly dismissed.