

(1984) 04 OHC CK 0013

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 71 of 1984

Nanda Parida

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 09-04-1984

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 162
Explosives Act, 1884 — Section 6(3)
Penal Code, 1860 (IPC) — Section 307, 399

Citation : (1984) 57 CLT 448

Hon'ble Judges : B.K. Behera, J

Bench : Single Bench

Advocate : D. Satapathy, for the Appellant; A. Rath, Additional Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

B.K. Behera, J.—Accused of commission of offences punishable under Sections 399 and 307 of the Indian Penal Code, Section 27 of the Arms Act and Section 6(3) of the Indian Explosive Act, the Petitioner seeks his release on bail after unsuccessfully moving the Court of Session. It has been submitted by Mr. Rath, the learned Additional Standing Counsel, that the only materials against the Petitioner are that in the first information report lodged on the basis of a secret information received by a police officer, the Petitioner has been suspected to be one of the culprits and a co-accused persons has, during his examination in the course of investigation by the police officer, implicated himself and the Petitioner as the culprits. None of the two materials can be treated as substantive evidence. A first information report is not substantive evidence. The statement of an accused person in the course of investigation is hit by Section 162 of the Code of Criminal Procedure. The learned Additional Standing Counsel has submitted before me that the Petitioner is also involved in the commission of other crimes. He had taken an adjournment to place before me a list of cases in which the

Petitioner has been involved, but, as has been submitted by him today, he has not received any information. The primary question for consideration in a case of bail is as to whether there is some material against the accused person. If there is none, the fact that he is involved in commission of some other offences, by itself, cannot be a ground to reject his application for bail. As has been laid down by the Supreme Court in the case of Bhagirathsinh Judeja Vs. State of Gujarat, . if there is no prima facie case, there is no question of considering other circumstances. But even where a prima facie case is established, the approach of the court in the matter of bail is not that the accused should be detained by way of punishment, but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with the evidence.

2. For the reasons aforesaid, I would allow the application and direct release of the Petitioner on bail on his furnishing a bond for Rs. 3,000/- (rupees three thousand) with two sureties each for the like amount to the satisfaction of the Chief Judicial Magistrate, Cuttack.