
(2007) 10 OHC CK 0052

In the Orissa High Court

Case No : Criminal Miscellaneous Jurisdiction Blapl. No. 3779 of 2007

Pramod Bagha @ Promod Kuner Bagha

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 11-10-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439, 482
Penal Code, 1860 (IPC) — Section 149, 302

Citation : (2008) CLT 302 (Suppl CrI)

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Judgement

M.M. Das, J.—Heard Learned Counsel for the Petitioner and the Learned Counsel for the State.

2. This is an application u/s 439 Code of Criminal Procedure for grant of bail to the Petitioner.

3. Charge sheet was submitted against the Petitioner and other co-accused persons for alleged commission of offence under Sections 302/149 Indian Penal Code. wherein the Petitioner was shown as an absconder. In the meantime, the case was split up and all the other co-accused persons faced trial in S.T. Case No. 7 of 2005 before the Learned Addl. Sessions Judge, Boudh. The said sessions case was disposed of by judgment dated 2.3.2006, the certified copy of which has been produced before this Court by the Learned Counsel for the Petitioner.

4. It appears from the said judgment that P.W. 7 was cited as an eye-witness to the alleged occurrence and the Learned Addl. Sessions Judge, considering the deposition of the said witness, came to the conclusion that as the said P.W. 7 stated that he reached at the spot after the occurrence, his statement cannot be considered to be an eye witness to the occurrence. Therefore, holding that the prosecution has failed to prove its case, the Learned Addl. Sessions Judge acquitted the accused persons.

5. Mr. Nayak Learned Counsel for the Petitioner relying upon the decision in the case of Rama Mandal @ Rupsingh Naik, reported in (2007) 37 OCR 159 and in the case of Central Bureau of Investigation v. Akhilesh Singh, reported in 2005(I) OLR (SC) 354, submits that in similar situation, it has been held by the Apex Court as well as this Court in the aforesaid decisions that no purpose will be served in further proceeding with the case when the main accused has been charged and the split up case, in which the co accused persons faced trial, as ended in acquittal.

6. In the case of Central Bureau of Investigation (supra), the Apex Court was considering the case, where Syed Modi, who was a Badminton Player of international fame, was murdered. In the said case, the Respondent was implicated with the offence of murder and conspiracy and it was the prosecution case that the main accused Dr. Sanjaya Singh in order to do away with Syed Modi conspired with the Respondent, who, in turn engaged the other accused persons who committed the crime. The main accused Dr. Sanjaya Singh was discharged by the Court of Session along with Mrs. Amita Kulkarni, who was the wife of Syed Modi. The Apex Court while deciding appeal against the order of the High Court by which the Respondent was discharged came to the conclusion that the order of discharge passed in favour of the main accused having attained finality, the High Court was fully justified in holding that no purpose will be served in further proceeding with the case against the Respondent therein. Considering the deposition of one of the prosecution witnesses recorded during the trial, the Supreme Court held that continuance of the criminal proceeding against the Respondent therein would amount to an abuse of the process of the Court and accordingly, confirmed the order of the High Court by which the said proceeding was quashed.

7. Mr. Dash, Learned Counsel for the State on the contrary, relying upon the 161 statements of the eye witness, P.W. 7, submitted that there are sufficient materials against the present Petitioner.

8. Considering the above submissions, as I find that the statement of the alleged eye witness, P.W. 7 has been disbelieved by the Learned Court in the split up trial, which ended in acquittal, I am of the view that there is no prima facie material to implicate the present Petitioner with the alleged offence. Of course, this being an application for bail u/s 439 Code of Criminal Procedure and not an application u/s 482 Code of Criminal Procedure for quashing the proceeding, it differs from the case laws cited by the Learned Counsel for the Petitioner, in that respect. Nonetheless, applying the ratio of the said cases to the facts of this case, it would be evident that the accused persons had committed the crime. In the case of Ramananda @ Ram Mandal @ Rupsingh Naik (supra), a Learned Single Judge of this Court taking into consideration that in a split up case, the trial having ended in acquittal held that, no useful purpose would be served in continuance of the criminal proceeding against the Petitioner who has not faced trial and this would amount to abuse of process of the Court. Had the Petitioner

approached this Court in an application u/s 482 Code of Criminal Procedure for quashing the proceeding pending against him, in view of the ratio laid down in the aforementioned cases, I am sure, this Court would have quashed the said proceedings.

9. Taking the above position of law and the facts of the case into consideration, I am of the opinion that this is a fit case, where the Petitioner should be granted bail. I accordingly direct that the Petitioner shall be released on bail by the Learned Addl Sessions Judge, Boudh in S.T. Case No. 14 of 2007 corresponding to G.R. Case No. 220 of 2004, on such terms and conditions, as the Learned Addl. Sessions Judge may deem just and proper.

10. The Bl. Apl. is accordingly disposed of.

11. Bl. Apl. disposed of.