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**(2007) 12 OHC CK 0034**  
**In the Orissa High Court**

Prasana Kumar Das

APPELLANT

Vs

State of Orissa

RESPONDENT

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**Date of Decision :** 13-12-2007

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 437, 439

**Citation :** (2008) CLT 289 (Suppl CrI) : (2008) 1 OLR 341 : (2008) OLR 289 (Suppl CrI)

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

**Bench :** Single Bench

**Final Decision :** Allowed

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**Judgement**

M.M. Das, J.—Heard learned Counsel for the petitioner and the learned Counsel for the State.

This is an application filed u/s 439(1)(b) of the Code of Criminal Procedure for modification of the conditions imposed by the learned Addl. Sessions Judge, Rourkela while directing the petitioner to be released on bail in B.A. No. 548 of 2007.

Learned Addl. Sessions Judge by order dated 9.10.2007 passed in the aforementioned bail application filed by the petitioner, directed that the accused-petitioner shall be released on bail on furnishing bail bond of Rs. 10,000/- with one solvent surety for the like amount to the satisfaction of the learned S.D.J.M., Partposh with a condition that during the period when the accused is on bail, he shall clear up the advance amount taken from various people and report the fact of such clearance to the I.O. concerned. The other conditions imposed by the learned Addl. Sessions Judge in the bail order is that the petitioner shall also report before the I.O. on each Sunday at evening hours and submit the progress of his clearance/refund of the advance amount. After completion of one month from the date of his release, he shall surrender before the Court of S.D.J.M., Panposh who will consider his case for bail in case he fulfils all the conditions in the meantime.

The application filed before the learned Addl. Sessions Judge was one u/s 439 Cr.P.C. for grant of regular bail to the petitioner, who is an accused in G.R. Case No. 1633 of 2007 and on being apprehended and produced before the learned S.D.J.M., Panposh on 5.9.2007 was remanded to custody.

2. The facts of the case reveal that an F.I.R. was filed by one Abhimanyu mukhi, inter alia alleging that the petitioner, who was running a Travel Agency in the name and style of "Rabi Tour and Travels" on persuading the informant that he will undertake a conducted tour to Port Blair by Flight and will bear the expenses towards Flight ticket, boarding and lodging, the informant paid a sum of Rs. 1,10,000/- to the petitioner and obtained a receipt with a condition that after delivering the Flight ticket, he will pay a further sum of Rs. 31,650/-. However, the petitioner did not deliver the Flight ticket nor returned the money. The petitioner also received amounts from many other persons, who were also dealt with in a similar manner. As the FIR discloses a cognizable offence, the same was registered by the police and investigation commenced. The petitioner as stated earlier, on being apprehended and produced before the learned S.D.J.M. on 5.9.2007 was remanded to the custody as his bail application was rejected by the learned S.D.J.M. On moving the learned Addl. Sessions Judge, Rourkela, the impugned order was passed.

3. Learned Counsel for the petitioner submits that the learned Addl. Sessions Judge has acted contrary to law in imposing a condition that the petitioner shall repay the amounts to the persons from whom he has received the same for the alleged conducted tour, while granting bail to him. He further submits that such condition, as has been imposed by the learned Addl. Sessions Judge amounts pre-judging the case and presuming that the petitioner is guilty of the alleged offences before the accused is tried. Learned Counsel also vehemently argues that once an application u/s 439 Cr.P.C. is allowed by directing that the accused will be released on bail, there is no provision in the Code of Criminal Procedure to direct that the accused will again surrender before the learned Magistrate, who will consider his prayer for bail afresh, as has been done in the instant case.

4. I have perused the order dated 9.10.2007 passed by the learned Addl. Sessions Judge. Section 439 Cr.P.C. prescribes that the High Court or the Court of Session may direct that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in Sub-section (3) of Section 437 Cr.P.C. (i.e. commission of an offence punishable with imprisonment, which may extend to 7 years or more or of an offence under Chapter-VI, Chapter-XVI or Chapter-XVII of the I.P.C. or abetment of, or conspiracy or attempt to commit, any such offence) may impose any condition, which it considers necessary for the purposes mentioned in that sub-section. There is no provision in the Code of Criminal Procedure, under which, the Court of Session while granting bail can direct that after fulfilment of the condition, the accused shall surrender before the Magistrate, who shall consider the question of bail afresh.

It is, therefore, clear that once the jurisdiction u/s 439 Cr.P.C. is exercised and

bail is granted to an accused, he cannot be directed to again surrender before the Magistrate and thereupon the Magistrate to consider the prayer for bail afresh.

5. As has been contended by the learned Counsel for the petitioner, the allegation of the prosecution being that the petitioner has received money from various persons by dishonestly inducing them to part with the said amounts, has cheated them. Unless the case is tried and the prosecution succeeds in proving its case beyond reasonable doubt, the petitioner cannot be compelled to refund the alleged amounts to the concerned persons. This, in my view, would amount to a sentence being imposed before finding the petitioner to be guilty of the alleged offences.

6. Thus, I am of the view that the conditions imposed by the learned Addl. Sessions Judge while granting bail to the petitioner cannot be sustained. All the conditions of bail as imposed by the learned Addl. Sessions Judge in the impugned order are, therefore, set aside and it is directed that the petitioner shall be released on bail of Rs. 10,000/- (Rupees ten thousand) with one solvent surety for the like amount to the satisfaction of the learned S.D.J.M., Panposh in G.R. Case No. 1633 of 2007 arising out of Rourkela P.S. Case No. 92 of 2007 subject to condition that the petitioner shall appear before the O.I.C. Rourkela Police Station once in every fortnight on Sundays by 10.30 A.M. till submission of the final form and shall appear before the learned S.D.J.M., Panposh on each of the dates to which the case is posted, unless he is prevented by sufficient cause from appearing before the said Court.

The CRLMC is accordingly allowed.

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