

(1991) 08 OHC CK 0003

In the Orissa High Court

Case No : Criminal Revision No. 330 of 1991

Reddy Nageswar Rao

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 19-08-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 389, 390, 395, 436, 44(1)

Citation : (1992) 2 OLR 180

Hon'ble Judges : A. Pasayat, J

Bench : Single Bench

Advocate : S.S. Rao, for the Appellant; Standing Counsel (Central), for the Respondent

Judgement

A. Pasayat, J.—Petitioner calls in question the propriety of the conditions imposed by the learned Sessions Judge, Cuttack, in the matter of grant of bail. According to him, the conditions are so stringent and unreasonable that they virtually amount to refusal of bail. The learned counsel for the Union of India, however, submits that considering the nature of offences involved such stringent conditions were warranted and were rightly imposed.

2. Main plank of the petitioner's argument is that the learned Sessions Judge has prima facie found that the allegations against the petitioner are not tenable in the eye of law. In this connection it has been submitted by the learned Standing Counsel that the observations made by the learned Sessions Judge are uncalled for and are contrary to the materials on record.

3. The conditions imposed by the learned Sessions Judge are as follows :

(i) cash security of Rs. 1 lakh ;

(ii) property security of Rs. 1 lakh with two sureties to the satisfaction of the Special C. J. M.,Cuttack ; and

(iii) forfeiture of the entire aforesaid amounts in default of appearance of the

petitioner on any day during trial.

4. Chapter XXXIII of the Code of Criminal Procedure, 1973 (in short "the Code") deals with provisions as to bail and bonds. The word "bail" has been used in Sections 44(1), 56, 81, 389, 390, 395 and 436 to 440 of the Code. In these different sections of the Code, the word "bail" has been used in different contexts and under different and diverse conditions. In whatever context or condition the word "bail" is used in those sections, it must conform to Chapter XXXIII of the Code when exclusive provisions for bail and bonds have been made. The surety is termed "bail, because the person arrested or imprisoned is placed in the custody of those who bind themselves or become bailor for his due appearance when required. "Bail" is understood to be the freeing or setting at liberty of one arrested or imprisoned upon any action, either civil or criminal, on surety taken for his appearance on certain day and a place named. The word "bail" has not been defined in the Code, though "bailable offence" and "non-bailable offence" have been defined in Section 2(a) of the Code. "Bailable offence" means offence which is shown as bailable in the First Schedule of the Code or which is made bailable by any other law for the time being in force; and non "bailable offence" relates to residuary offences. "Bail" means the release of an accused from the custody of the officers of law and entrusting him to the private custody of persons who become bound as sureties to produce the accused to answer the charge at the stipulated time or date. In Section 433 a novel provision for grant of anticipatory bail by the High Court or a Court of Session, to a person who has not yet been arrested or taken into custody, but apprehends arrest has been made.

5. Section 441 of the Code indicates the form of bail and surety bond given in the Schedule of forms and clarifies the position of the surety in certain cases where the surety does not guarantee the payment of any money by the person accused who is released on bail, but guarantees the attendance of that person. He is surety for attendance and not a surety for payment of money.

6. The purpose for which the surety is taken primarily is to ensure attendance of the accused at the time of trial, Stringent conditions are imposed where the offence is such that the accused may be tempted to jump bail. No hard and fast rule can be laid down as to the quantum of amount of surety that may be fixed. It would depend on the gravity of offence and the circumstances. It is true that conditions should not be made which would amount to virtually refusal to grant bail. The Court has a bounden duty to see that the amount of surety fixed should not be so low as to encourage or tempt the accused to jump bail and not to face trial.

7. The offences which are usually treated as economic offences are a class by themselves. The allegations against the petitioner are that he committed offences for being in unauthorised possession of gold of foreign origin, punishable under the Customs Act, 1962, Foreign Exchange Regulation Act, 1973, and Import and Export Control Act, 1947.

8. Smuggling is a form of offence which affects national wealth. Alarming offences involving smuggling are on the rise. Therefore, stringent conditions are to be imposed, but those should not be unreasonable. I find that gold worth more than 3 lakhs was seized from the petitioner. He claimed to be a mere courier and not the principal offender. This is a matter which shall be adjudicated at the trial. I am not presently very much concerned with the merits of the case but for the reasonableness of the conditions imposed. As observed by me in *State v. Surendranath Mohanty* 1990 (II) OLR 213 the concept of bail emerges from the conflict between "police power" to restrict the liberty of a man who is alleged to have committed a crime and the presumption of innocence in favour of the alleged criminal.

9. Observations have been made by the learned Sessions Judge while disposing of the bail application, which in my view, are not called for. While dealing with an application for bail, the Court is not to make an elaborate analysis of the merits of the case or record conclusions which may indicate pre-judging merits of case. Detailed examination of evidence and elaborate documentation of merit is not desirable and should be avoided while passing orders on bail applications. What is necessary is the satisfaction about a prima facie case and not an exhaustive exploration of merits in the order itself. (See AIR 1980 SC 786, *Niranjan Singh and Anr. v. Prabhakar Ranjan Kharata and Ors.*). However, those observations in the impugned order should not influence the learned Sessions Judge or any other Court when the case is taken up for trial.

10. The learned counsel for the petitioner submits that deposit of cash security of Rs. 1. lakh is beyond the means of the petitioner. According to him, the cash security should not be insisted upon and on the contrary only condition of property security should be maintained. He has primarily, therefore, prayed for waiver of the condition relating to deposit of cash security. I do not think that the prayer for waiver of the condition relating to cash security is acceptable. However, considering the value of gold seized, I feel interest of justice would be best served if it is directed that the petitioner shall be released on bail on the following conditions.

(i) He shall make cash deposit of Rs. 30,000/- (thirty thousand) in the Court of the Special C.J.M., Cuttack. The cash security shall remain in deposit till final disposal of the case.

(ii) He shall furnish property security for a sum of Rs. 2,00,000/- (two lakhs) with two sureties of Rs. 1,00,000/- (one lakh) each to the satisfaction of the said learned Magistrate.

(iii) The petitioner while on bail shall not tamper with evidence or misuse his liberty on bail. He shall appear before investigating officers as and when required.

The criminal revision is accordingly disposed of.