
(2016) 11 OHC CK 0013
In the Orissa High Court
Case No : ABLAPL No. 12133 of 2016

Satyaban Sahu

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 07-11-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 399, Section 402

Citation : (2017) sup1 CutLTCriminal 278

Hon'ble Judges : S. Pujahari, J.

Bench : Single Bench

Final Decision : Dismissed

Judgement

S. Pujahari, J. - Heard learned counsel for the petitioner and learned counsel for the State.

2. The petitioner apprehending his arrest in Balangir Sadar P.S. Case No.147 of 2016, corresponding to G.R. Case No.521 of 2016, pending in the Court of learned S.D.J.M., Balangir, registered for alleged commission of offences punishable under Sections 399/402 of the I.P.C. and Sections 25/27 of the Arms Act, has filed this petition for his release on pre-arrest bail.

3. It appears from the allegations that the petitioner along with others were allegedly gathered in the odd hours of the night being armed with deadly weapons by parking three motorcycles in a place preparing to commit dacoity and on seeing the police party, they tried to escape from the spot and the police party could apprehend one of them, namely, Satyabrata Sahu, the brother of the present petitioner at the spot. Police had seized one pistol loaded with six rounds of live ammunitions and some mobile handsets. The person arrested indicated the present petitioner to be one of them and stated that he was not aware of the names of the other accused persons in this case, but his brother the present petitioner was aware of their names. But, nothing has produced by the State indicating the fact that the petitioner is a person having criminal antecedent.

4. Contention of the learned counsel for the petitioner is that since the petitioner is indicted in this case on the basis of confession of co-accused and nothing is there indicating the fact that the petitioner shall abscond and/or tamper with the prosecution evidence, he deserves to be released on pre-arrest bail, more so when no useful purpose is going to be served by keeping the petitioner in the custody in the aforesaid case for some days, especially when he is willing to cooperate with the investigation in this case.

5. Learned counsel for the State, however, submits that material is there indicating involvement of the petitioner in the heinous and serious offence and nothing is there indicating the fact that he has been indicted in the aforesaid case being actuated with malafide which is the prime consideration for grant of pre-arrest bail, hence, the petitioner has made out no case for his release on pre-arrest bail, more so when on custodial interrogation of the petitioner, materials are likely to come out indicating the involvement of others.

6. Section 438 of the Cr. P. C. which deals with the jurisdiction to grant anticipatory bail mandates that when any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction that in the event of such arrest, he shall be released on bail; and in such eventuality that Court taking into consideration, inter alia, the factors: (i) the nature and gravity or seriousness of accusation as apprehended by the applicant; (ii) the antecedents of the applicant including the fact as to whether he has, Oil conviction by a Court, previously undergone imprisonment for a term in respect of any cognizable offence; (iii) the possibility of the applicant to flee from justice; and (iv) whether the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application or grant him the pre-arrest bail.

7. It appears from the aforesaid provision that nature and gravity of the accusation may be one of the consideration for grant or refusal of bail, but the same is not the sole consideration. If a person accused of a heinous and serious offence, it cannot be said that he is not entitled to be released on pre-arrest bail. A Constitution Bench of the Apex Court dealing with the provision under Section 438 of the Cr.P.C. in the case of Gurbaksh Singh Sibbia v. State of Punjab, reported in (1980) 2 SCC 565, have held that :

"18.....We see no valid reason for rewriting Section 438 with a view, not to expanding the scope and ambit of the discretion conferred on the High Court and the Court of Session but, for the purpose of limiting it. Accordingly, we are unable to endorse the view of the High Court that anticipatory bail cannot be granted in respect of offences like criminal breach of trust for the mere reason that the punishment provided therefor is imprisonment for life. Circumstances may broadly justify the grant of bail in such cases too, though of course, the court is free to refuse anticipatory bail in any case if there is material before it justifying such refusal."

8. The Apex Court also at paragraph 21 of the said case have held that :

"21.....A wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use. Every kind of judicial discretion, whatever may be the nature of the matter in regard to which it is required to be exercised, has to be used with due care and caution. In fact, an awareness of the context in which the discretion is required to be exercised and of the reasonably foreseeable consequences of its use, is the hallmark of a prudent exercise of judicial discretion. One ought not to make a bugbear of the power to grant anticipatory bail."

9. In the case of Siddharam Satlingappa Mhetre v. State of Maharashtra and others, reported in (2011) 48 OCR (SC) 1 : (2011) 2 SCC 694, the Apex Court dealing with the provision under Section 438 of the Cr.PC. and taking note of the aforesaid observations rendered in the case of Gurbaksh Singh Sibbia (supra) and other cases have held at paragraphs 111 and 112 as follows :

"111. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualized for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case. As aptly observed in the Constitution Bench decision in Sibbia case that the High Court or the Court of Session has to exercise their jurisdiction under Section 438 Cr. PC. by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail :

(i) the nature and gravity of the accusation and exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognisable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vii) The Courts must evaluate the entire available material against the accused very carefully. The Court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the Court should consider with

even greater care and caution because over-implication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The Court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

As it appears, the petitioner apprehends his arrest in serious offences under Sections 399/402 of IPC. Indictment of the petitioner in the aforesaid case is presently on the confession of the co-accused before the police. The statement of the co-accused at the stage cannot be said to be not at all incriminating. From the said statement of the co-accused, it appears that the petitioner is privy to many clues/evidence with regard to the offences alleged. The investigating agency needs the petitioner's custody for interrogation as such to collect more evidence. A custodial interrogation is more useful and helpful for collection of evidence, is not in dispute. Evidences are yet to be collected. Nothing is there indicating the fact that the petitioner has been indicted in the aforesaid case on frivolous allegations or in order to humiliate him or injure him by taking him to police custody.

In such premises, even if nothing is there indicating the fact that the petitioner shall abscond and/or repeat similar type of offence, if allowed to go on pre-arrest bail, this Court is of the view that the petitioner does not deserve to be released on pre-arrest bail. Accordingly, his prayer for pre-arrest bail stands rejected.