
(2007) 05 OHC CK 0043
In the Orissa High Court

Shibadutta Sharma

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 18-05-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439, 482
Penal Code, 1860 (IPC) — Section 420, 467, 468

Citation : (2007) CLT 676 (Suppl CrI) : (2007) CriLJ 4509 : (2007) 2 OLR 41 :
(2007) OLR 676 (Suppl CrI)

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

Bench : Single Bench

Judgement

M.M. Das, J.—Heard Mr. B. Mishra, learned senior counsel for the petitioner, learned Counsel for the State and Mr. Sanjeet Mohanty, learned senior counsel appearing for the informant.

2. This application u/s 439 Cr.P.C. has been filed by the petitioner-Shiv Dutta Sharma for grant of bail in G.R. Case No. 27 of 2007 corresponding to Barbil P.S. Case No. 11 of 2007 pending before the learned J.M.F.C, Barbil.

3. An information was lodged before the Officer-in-Charge, Barbil Police Station by one Shri N.S. Sharma, the authorized representative of M/s. Monnet Ispat and Energy Limited making allegation against the petitioner of commission of offence of cheating and other offences. The said information was registered as an F.I.R. having disclosed commission of cognizable offence under Sections 420/467/468 IPC against the petitioner. The petitioner was arrested by the Investigating Officer on 16.3.2007. On being produced before the learned J.M.F.C, Barbil on the same day, he prayed for grant of bail before the learned Magistrate which was rejected by his order dated 21.3.2007 and the petitioner was remanded to custody. He thereafter, filed an application for bail on 21.3.2007 before the Court of Session at Keonjhar which was also rejected by the learned Sessions Judge on 29.3.2007. Thereafter, the petitioner has filed the present application before this Court on 3.4.2007.

4. It appears from the record that when the matter was taken up on 13.4.2007, learned Counsel for the petitioner suggested that there is every possibility of settlement of the dispute if the petitioner is granted interim bail for a period of one month and the learned Counsel for the informant agreed to such suggestion. On consideration of the same, the petitioner was directed to be released on interim bail for a period of one month from the date of his release by the learned J.M.F.C., Barbil in the connected case on such terms and conditions as the learned Magistrate may deem just and proper. It was further clearly directed that the petitioner shall surrender to custody on expiry of the period of interim bail and in the meantime both the parties with the help of their respective advocates may try for settlement of the dispute. A condition was imposed in the said order that the petitioner while on interim bail, shall appear before the local police twice a week. As per the said order, the petitioner was released on bail on certain conditions imposed by the learned Magistrate. It is stated by the learned Counsel for the informant that though the settlement process was initiated at Barbil, but the same failed. Now a copy of the order dated 13.5.2007 passed by the learned J.M.F.C. in the connected G.R. case has been filed before me, from which, it appears that the petitioner being required to surrender after expiry of the period of interim bail, on 13.5.2007, which was a Sunday, the case record was put up at the residential office of the Magistrate. But the petitioner did not appear before the said Magistrate and the learned Counsel for the petitioner filed a petition praying for extension of time to enable the accused to surrender to custody on the grounds stated therein. The learned Magistrate recording that as per the direction of this Court, the petitioner should have surrendered to custody on that day, having not surrendered and making a claim that he is suffering, came to conclusion that the petitioner has abused the liberty granted to him and rejected the said application for grant of time, as prayed for by the petitioner and issued N.B.W. for apprehending the petitioner forthwith.

5. It would be pertinent to mention that in the interregnum, the petitioner filed an application before this Court u/s 439(1)(b) read with Section 482, Cr.P.C. numbered as CRLMA No. 58 of 2007 praying for deletion of the condition imposed by the learned Magistrate during grant of interim bail, directing that the petitioner shall not leave the jurisdiction of the learned Magistrate. This Court by order dated 30.4.2007 taking into consideration the submission made on behalf of the petitioner that unless the said condition is lifted, the purpose for which the interim bail was granted i.e. for settlement of the dispute would be frustrated as the petitioner will not be able to move out of the territorial jurisdiction of the learned Magistrate, this Court lifted the said condition imposed by the learned Magistrate while releasing the petitioner on interim bail.

6. Mr. Mishra, learned senior counsel appearing for the petitioner forcefully argued that the dispute between the parties is purely of civil nature and there is no prima facie case made out showing commission of offence u/s 420/467/468 I.P.C. He further submitted that the petitioner being a reputed business man and holding mining lease in the State, there is no chance of the petitioner fleeing

from justice and as investigation is almost complete, there is no chance on the part of the petitioner to interfere in the process of investigation. On the above basis, he submitted that the petitioner should be released on bail.

7. Mr. Mohanty, learned senior counsel appearing for the informant, per contra, brining the written F.I.R. lodged before the police, to the notice of this Court, submitted that the allegation made in the said F.I.R. clearly shows commission of offence u/s 420 I.P.C. including other Sections of the Penal Code on which the F.I.R. has been registered.

8. Learned Counsel for the State who has produced the case diary supporting the contention made by Mr. Mohanty, submitted that the petitioner belongs to Kolkata and is a moneyed and influential person. On the above basis, he contended that if the petitioner will be allowed to be released on bail, there is every possibility of his tampering with the prosecution evidence and gaining over the prosecution witnesses.

9. In order to appreciate the rival contentions made by the parties, it is necessary to state the facts of the case in gist which are as follows:

A) Admittedly, the petitioner holds a mining lease consisting of an area of 26.243 hectrs. Situated at village Raika under Champua Sub-Division of Keonjhar District in the State of Orissa. The mineral found in the mines area is iron ore and manganese ore.

B) As per the allegation in the F.I.R., the petitioner represented before the informant that the entire mining area for which he has obtained the lease is under his possession, free from any kind of encumbrances, charges, disputes and litigations and he has full authority to enter into an agreement for sale of the entire iron ore and manganese ore excavated by the raising contractor, namely, M/s. B. K. Coal Fields Pvt. Ltd. on his behalf from the leasehold area.

C) Being, thus, induced by the statement of the petitioner, the informant-company entered into an agreement on 7.3.2006 with the petitioner, whereunder the informant agreed to buy exclusively the entire iron ore and manganese ore which were to be excavated by the raising contractor from the leasehold area.

D) And, on the basis of the aforesaid representation of the petitioner, the informant made an advance payment of Rs. 4.00 crores by a Bank draft bearing No. 171551 dated 4.3.2006 drawn on ICICI Bank Ltd. payable at Kolkata in the name of the petitioner.

E) It is further alleged that the said raising contractor being M/s. B. K. Coal Fields Pvt. Ltd. received the letter dated 2.9.2006 from the petitioner through his Manager intimating them that some dispute has arisen between the petitioner and the Orissa Mining Corporation with regard to the demarcation of the mining area and the Deputy Director of Mines, Joda has asked the petitioner to stop the mining activity in the said area.

F) On enquiry made by the informant, it came to light that the petitioner was well aware of the dispute with regard to the demarcation of his mining lease area on the date when he falsely represented before the informant that he is in exclusive possession over the entire mining area and making the informant believe such representation induced it to part with valuables i.e. an amount of Rs. 4.00 crores.

10. This being the nature of the dispute and the allegations made against the petitioner, this Court is to consider as to whether the conditions for granting bail to an accused has been fulfilled or not.

11. The portion of the agreement executed between the parties which is relevant for the purpose of this case is quoted hereunder:

AND WHEREAS SDS has approached the Buyer with the proposal to exclusively sell the entire Iron and Manganese ore excavated by its raising contractor on his behalf from the leasehold areas delineated and marked in the plan annexed hereto.

AND WHEREAS relying upon the said promises, representations and assurances of SDS and believing the same to be correct, buyer has agreed to purchase exclusively the entire excavated Iron and Manganese ore from the leasehold area of SDS, on the terms and conditions mutually agreed and contained therein.

WHEREAS both the parties hereto represent that they have full authorization/ Corporate authorization and they are duly empowered to sign and execute this agreement and this agreement shall be binding upon and enforceable by both the parties.

12. It, therefore, prima facie appears that the petitioner dishonestly induced the informant to part with the advance amount of Rs. 4.00 crores making the informant believe that the petitioner is in exclusive possession over the entire mining lease area and is capable of supplying the excavated ores/course to the informant. This Court is, therefore, satisfied that there exists prima facie case showing commission of offence u/s 420 I.P.C. However, even though prima facie case of commission of offence is disclosed, it is not sufficient to reject the prayer of the petitioner for grant of bail, solely on that ground.

13. It is an well established principle of law that the following matters are to be considered in an application for grant of bail.

(i) Whether there is any prima facie case or reasonable ground to believe that the accused had committed the offence.

(ii) Nature and gravity of the charge.

(iii) Severity of punishment in the event of conviction.

(iv) Possibility of the accused absconding or fleeing from justice if released on bail.

(v) Character, behaviour, means, position and standing of the accused.

(vi) Likelihood of the offence being repeated.

(vii) Reasonable apprehension of the witnesses being tampered with; and

(viii) Danger, of course, of justice being thwarted by grant of bail. (See Prahallad Singh Bhati v. NCT, Delhi 2004 SCC 280 and Gurcharan Singh v. State (Delhi Administration) AIR 1978 SC 179)

14. In the case of State through C.B.I. v. Amarmani Tripathi (2005) 32 OCR (SC) 517 the Supreme Court while considering a similar question came to the conclusion that while a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused.

15. The Supreme Court also observed in the above decision that while a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no pre-judging and no prejudice, a brief examination to be satisfied about the existence or otherwise of a prima facie case is necessary.

16. In the case of D.K. Ganesh Banu v. P.T. Manokaran and Ors. AIR 2007 SCW 1896 the Supreme Court while analyzing the difference between an "anticipatory bail" and "bail" has clearly laid down that "bail" is basically release from restraint, more particularly, the custody of the police and for making an application in terms of Section 439 Cr.P.C, a person has to be in custody.

17. Examining the facts of the present case in the touch stone of the law as laid down by the Supreme Court in the aforesaid decisions, this Court is of the view that a prima facie case of commission of offence u/s 420 I.P.C. has been made out against the petitioner. However, as no materials have been brought before this Court to show that in the event the petitioner is released on bail, just because, he is a resident of Kolkata and a moneyed and a influential person, he will flee from justice or will abscond or influence the witness, grant of bail to the petitioner cannot be refused on this ground.

18. With regard to the nature of the offence committed, it is to be seen as to whether the offence alleged to have been committed is a heinous one, so as to refuse the petitioner to be released on bail, on that ground. No doubt, prima facie, it appears that the informant has been induced in order to part with heavy sum of money amounting to Rs. 4.00 crores by the petitioner making the informant believe that the petitioner is in exclusive possession over the mining lease area and would be able to perform his part of the contract as per the agreement between the parties. This Court is of the considered view that this aspect can be taken care of, if stringent conditions are imposed while granting bail to the petitioner and this Court finds no reason as to why the petitioner should not be granted bail. However, as admittedly, the petitioner after expiry of

the period of interim bail, has not surrendered before the learned J.M.F.C., and N.B.W. has already been issued by the learned Magistrate, directing arrest of the petitioner, at this stage, no order of bail can be passed since the petitioner is not under restraint or in custody.

19. In view of the aforesaid circumstances, at this stage, no bail can be granted as the petitioner is not in custody as stated above.

20. Put up this matter for further orders on 26.6.2007.

21. If, in the meantime, the petitioner is either apprehended and produced before the learned Magistrate on execution of the N.B.W. issued by him and remains in custody, necessary orders for releasing the petitioner on bail on such conditions as may be imposed, shall be passed.

22. Urgent certified copy of this order be granted on proper application.