

(2022) 08 OHC CK 0105

In the Orissa High Court

Case No : Criminal Appeal Nos. 572, 709, 710, 711, 712 Of 2021

Siba Shankar Dash @ Siva @ Pintu

APPELLANT

Vs

State Of Orissa

RESPONDENT

Date of Decision : 11-08-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 — Section 3(1)(iv)(r), 3(2)(v), 14A
Indian Penal Code, 1860 — Section 34, 120B, 294, 386, 387, 420, 448, 467, 468, 471, 506
Arms Act, 1959 — Section 25(1B), 27

Citation : (2022) 08 OHC CK 0105

Hon'ble Judges : B. P. Routray, J

Bench : Single Bench

Advocate : S.D.Das, S.K.Nayak, B.Pradhan

Final Decision : Disposed Of

Judgement

B. P. Routray, J

1. The Appellant seeks bail under Section 439 Cr.P.C. read with Section 14-A of the SC & ST (PoA) Act.

2. The offences alleged are under Sections 448/420/386/387/294/506/467/468/471/120-B/34 of the I.P.C., Section 25(1B)/

27 of the Arms Act and Section 3(1)(iv)(r)/3(2)(v) of the SC & ST (PoA) Act in five Cases Viz., G.R. Case No. 22/2017, 27/2018, 6/2019, 7/2019 & 8/2019 pending before the learned 2nd Additional Sessions Judge -cum- Spl. Judge, Berhampur. Present appeals are arising out of those five G.R.Cases.

3. It is submitted on behalf of the Appellant that he is inside custody since 18th January, 2018 in G.R.Case No.22/2017, 17th January, 2019 in G.R.Case No.27/2018, 2nd April, 2019 in G.R.Case No.6/2019 and 18th June, 2019 in

G.R.Case No.7 of 2019. It is further submitted that his prayer for bail was earlier rejected twice by this Court in CRLA Nos.672, 195, 470, 670 & 919 of 2019; and CRLA Nos. 192, 193, 194, 195 and 196 of 2020 respectively. On those last two occasions this Court while rejecting the prayer for bail has categorically directed the trial court to complete the trial as expeditiously as possible in terms of the principles prescribed by the Hon'ble Supreme Court in the case of Hussain and another Vrs. Union of India and another, (2017) 5 SCC 702 and in spite of such directions of this Court, the trial did not progress substantially and is still pending. It is therefore submitted that keeping in view the delay in completion of trial, the Appellant should be released on bail.

4. Mr.Nayak, learned Additional Government Advocate submitted on behalf of the State that in CRLA No.572 of 2011 and CRLA No.711 of 2021, the informant died in the meantime and his L.Rs did not accept notice from the police. He further submitted that all such trials before the learned Special Judge are at the verge of completion and will be completed very shortly. He further added that this Appellant is a notorious gangster of the locality involved in fifty seven cases at Berhampur including many heinous offences like murder etc. His father was also a habitual offender of the locality. The Appellant is operating his gang despite being inside the jail and B.N.Pur P.S.Case No.205 dated 29th September, 2019 and Golanthara P.S.Case No.338 dated 19th November, 2020 have been registered relating to threat posed to different witnesses of the case.

5. Mr.Pradhan, learned counsel appearing for the Informant in CRLA Nos.709, 710 & 712 of 2021 objected the prayer for bail supporting the submissions of the learned Additional Government Advocate. He further added that repeated attempts of threat are put on the witnesses and the delay in completion of trial is not due to laches on the part of the informant or the prosecution and thus no benefit can be given to the Appellant in that aspect.

6. Mr.Das, learned Senior Advocate appearing for the Appellant submitted in his reply that admittedly, the delay is not due to any reason attributable to the present Appellant. Rather, an analysis of sequence of examination of the witnesses before the trial court would reveal how the prosecution is delaying production of the witnesses tactfully only to deprive of the Appellant for granting bail. He further emphasizes that the allegations of putting threat to the witnesses at the instance of the Appellant is not at all correct since the Appellant has neither been arrayed as an accused in B.N.Pur P.S.Case No.205 of 2019 nor Golanthara P.S.Case No.338 of 2020. As per him, during the interim release of the Appellant on bail for the period from 8th March, 2022 to 4th April, 2022 on account of thread ceremony of his son, no such allegations of disturbances or overt activities was made either with regard to commission of any offence or his behavior. Therefore based on two unfounded allegations made during the year 2019 and 2020, the Appellant should not be deprived of the benefits of bail.

7. Two respective charts have been filed from the side of the Appellant as well as the State showing the position of the trial in all those five G.R.Cases pending

before the learned Special Judge, Berhampur and admittedly, as per both the charts, no negligence on the part of the Appellant is found attributable for the cause of delay in trial. It is found that only in G.R.Case No.22 of 2017 (Corresponding to CRLA No.712 of 2021), examination of all the prosecution witnesses are complete. But in rest of the cases the evidence from the side of the prosecution are yet to complete.

8. It is true that there are number of criminal antecedents against the Appellant suggesting the Appellant as a habitual offender in the locality. But for the said reason only, it would be inappropriate to keep him behind the bars indefinitely as an UTP. The principles of speedy trial are stated in several of decisions of the Hon'ble Supreme Court, which need not be discussed here in detail. (See:- Ranjan Dwivedi vrs. Central Bureau of Investigation, (2012) 8 SCC 495, Abdul Rehman Antulay and others vrs. R.S.Nayak and another, (1992) 1 SCC 225, Vakil Prasad Singh vrs. State of Bihar, (2009) 3 SCC 355, Pankaj Kumar vrs. State of Maharashtra and others, (2008) 16 SCC 117, Hussainara Khatoon and others vrs. Home Secretary, State of Bihar, (1980) 1 SCC 81 and Satender Kumar Antil vrs. Central Bureau of Investigation and another, 2022 SCC OnLine SC 825)

9. The important factors to be taken into account while considering the prayer for bail are that, prima-facie case against the accused, the gravity of the allegations, position and status of the accused and his antecedents, the likelihood of the accused fleeing from the course of justice, likelihood of committing further offence upon his release, the possibility of tampering with evidence etc. It is also important to look into the period of custody of the accused vis-à-vis the maximum punishment prescribed for the offences alleged.

10. The earlier two orders of this Court rejecting the prayer for bail of the Appellant are dated 12th December, 2019 and 11th February, 2021 respectively. This Court earlier rejected the prayer for bail of the Appellant mainly on the ground of proclivity of the Appellant in committing offences. Taking the period of custody of the Appellant from 18th January, 2018, he has already incarcerated for more than 4 ½ years till date as an UTP. There is no allegation made against him with regard to any mischief or disturbances in the locality during the period of his interim release. More than twenty months have been elapsed from the date of registration of Golanthara P.S.Case No.338 of 2020 though the Appellant is undisputedly not a charge-sheeted accused in the said case. Considering all such factors and the period of detention of the Appellant inside custody vis-à-vis the maximum punishment prescribed for the offences alleged, I am inclined to release the Appellant on bail subject to conditions.

11. Accordingly, it is directed to release the Appellant on bail in all the Appeals, i.e. Golanthara P.S.Case No.204 of 2018 corresponding to G.R.Case No.27 of 2018 (arising out of 1CC Case No.4 of 2018), Golanthara P.S.Case No.62 of 2019 corresponding to G.R.Case No.6 of 2019 (arising out of 1CC Case No.2 of 2018), Golanthara P.S.Case No.63 of 2019 corresponding to G.R.Case No.7 of 2019 (arising out of 1CC Case No.3 of 2018), Golanthara P.S.Case No.64 of 2019

corresponding to G.R.Case No.8 of 2019 (arising out of 1CC Case No.5 of 2018) and Golanthara P.S.Case No.182 of 2017 corresponding to G.R.Case No.22 of 2017 by the learned 2nd Addl. Sessions Judge, Berhampur subject to following conditions:-

- (i) The Appellant shall furnish two sureties for Rs.50,000/- each in each case, out of which one shall be his relative;
- (ii) The Appellant shall not be involved in any other offence while on bail;
- (iii) The Appellant shall not dissuade any witness directly or indirectly by way of inducement, threat or promise acquainted with the facts of the case from disclosing such facts before the court or tamper with the evidence;
- (iv) The Appellant shall not create any untoward situation in public and shall not be involved in any political activities, directly or indirectly;
- (v) The Appellant shall appear before the IIC, Golanthara Police Station once in every week till completion of trials in all the cases.

12. It is made clear that violation of any such conditions shall entail cancellation of bail of the Appellant and in such event the trial court shall be competent to decide the question of cancellation. It is further made clear that if anything is discovered or revealed against him to reasonably believe that he is conspiring for commission of any cognizable offence, the prosecution is at liberty to apply for immediate cancellation of bail before the learned trial court.

13. With the aforesaid directions, all the Appeals are disposed of.

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