
(2008) 10 OHC CK 0041
In the Orissa High Court

Sk. Raja @ Sk. Noorhassan

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 01-10-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437, 439
Penal Code, 1860 (IPC) — Section 302, 34, 376, 511

Citation : (2008) 106 CLT 784 : (2008) 2 OLR 345 Supp

Hon'ble Judges : L.K. Mishra, J

Bench : Single Bench

Judgement

L.K. Mishra, J.—This is an application u/s 439 of Cr.P.C.

2. It is not necessary to enter into the merits of the case since I propose to dispose of the case on a preliminary point.

3. The Petitioner is an accused in G.R. Case No. 242 of 2008 pending in the Court of learned J.M.F.C, Salipur involving offence under Sections 302/376/511/34 of I.P.C. His prayer for bail was rejected by the learned J.M.F.C. for which he approached the Sessions Court in a petition u/s 439 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short). The learned First Addl. Sessions Judge, Cuttack rejected the bail application vide Order Dated 30.06.2008 passed in BLAPL No. 674 of 2008 which is quoted in extenso:

30.6.2008. In absence of learned Sessions Judge, Cuttack, this bail is put up before this Court and heard the learned defense Counsel appearing for the Petitioners Sk. Puka @ Sk. Mujafar, Sajid Khan and Sk. Raja & Sk. Nurhassan, allegedly accused in G.R. Case No. 242 of 2008 arising out of Jagatpur P.S. Case No. 28 dated 28.04.08 of the Court of learned J.M.F.C., Salipur registered u/s 302 and also heard the Learned Addl. P.P. Sri S.N. Sahu, appearing for the State and since it is reasonably believed that the accused persons are involved in an offence punishable with death or imprisonment of life, this Court is not inclined to release the Petitioners on bail and accordingly the bail petition stands rejected.

4. Power to grant bail u/s 439 has, under the scheme of the Cr.P.C., been given to higher Courts like the Court of Sessions and the High Court. This provision empowers these Courts to grant bail to a person who is an accused of an offence and is in custody. Such power is unfettered and is not circumscribed by conditions unlike Section 437(1) of Cr.P.C. While exercising such power, a Court is not impeded by absolutely anything except his own conscience and good Judgment.

5. As is apparent, the Learned First Addl. Sessions Judge has rejected the application for bail merely on the ground that the offence is punishable with death penalty or life imprisonment. It is apparent that he is not aware of the extent of power to grant bail while exercising jurisdiction u/s 439 of Cr.P.C.

6. The impugned order is found to have been passed without any valid and lawful reason. Therefore, the said order is not sustainable and is set aside. The matter is remanded back to the learned First Addl. sessions Judge, Cuttack, who shall dispose of the bail application, after hearing from both sides, as expeditiously as possible.

The BLAPL is disposed of.