

(2003) 09 OHC CK 0015

In the Orissa High Court

Case No : Criminal REV. No. 615 of 2003

Smt. Sarita Singhi

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 12-09-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437(3), 439(1)
Penal Code, 1860 (IPC) — Section 120B, 34, 420, 468

Citation : (2003) CLT 1228 (Suppl CrI) : (2003) 26 OCR 546 : (2003) OLR 1228 (Suppl CrI)

Hon'ble Judges : Pradip Mohanty, J

Bench : Single Bench

Advocate : S. Ch Mohapatra, R.K. Nayak, P.C. Behera and M. Behera, for the Appellant; S. Das, A.G.A., for the Respondent

Judgement

Pradip Mohanty, J.—The Petitioner having challenged in this revision the order dated 16.8.2003 passed by the learned S.D.J.M. (S), Cuttack, in G.R. Case No. 624 of 1997 and sought for setting aside/modification of conditions imposed by learned S.D.J.M. while releasing her on bail, relief claimed for in this revision is squarely covered u/s 439(1)(b) of the Code of Criminal Procedure.

2. Though the learned Counsel for the Petitioner assailed the bail conditions to be unreasonable restrictions amounting to refusal of bail, it is well within the legal jurisdiction of a Magistrate to impose conditions while releasing an accused on bail u/s 437(3) Code of Criminal Procedure. However, special powers of High Court and Court of Session regarding bail also include exercise of jurisdiction u/s 439(1)(b) Code of Criminal Procedure which reads as follows:

439. Special Powers of High Court or Court of Session regarding bail.—(1) A High Court or Court of Session may direct -

(a) x x x

(b) that any condition imposed by a Magistrate when releasing any person on

bail be set aside or modified:

3. On the allegations that the Petitioner's firm defrauded the informant of Rs. 37,450/- by selling forged shares, the Petitioner, her husband and two Ors. are accused of commission of offences under Sections 468/420/120-B/34 I.P.C. Two of the co-accused persons have been granted anticipatory bail in BLAPL Nos. 5658 of 2003 and 6475 of 2003 by this Court. The Petitioner's husband, who is admittedly employed abroad in U.A.E. is yet to be apprehended. The Petitioner was arrested when she came to India and arrived at Calcutta Airport. While releasing the Petitioner on bail, the learned S.D.J.M. has imposed the conditions that she cannot leave India and her passport seized during investigation shall not be released without permission of the Court, which conditions the Petitioner assails as onerous.

4. Though Mr. Das, Additional Government Advocate, disputes some of the factual assertions of the Petitioner, it is not disputed that her husband, a co-accused, is residing in U.A.E. for earning his livelihood. The Petitioner has filed documents from which it appears that her children are studying in a school there. It transpires from the case diary that though charge-sheet has not been filed, "investigation of the case is complete". It also appears from the statements of the informant before police that upon repayment of money the dispute has been settled out of Court. That apart, the investigating agency has already taken steps for apprehension of the Petitioner's husband with the assistance of C.B.I. and Interpol, though belatedly. Callousness on the part of the investigating agency in taking prompt and effective steps for apprehension of the remaining accused persons for long six years is apparent. Delay in apprehending the remaining accused persons should not be a reason for undue curtailment of the Petitioner's liberty. Therefore, good grounds exist for modification of bail conditions.

Accordingly, the condition imposed by the S.D.J.M. while releasing the Petitioner on bail that "she cannot leave India and her passport seized during investigation shall not be released without permission of the Court" is modified to the extent indicated below:

- (i) The Petitioner shall furnish Bank guarantee to the tune of Rs. 3,00,000/- (rupees three lakhs) for her appearance in Court when directed by the Court;
- (ii) On all other dates, steps as per law shall be taken on her behalf; and
- (iii) The Petitioner shall keep the Court apprised of her correct present address from time to time.

5. In view of the above, it is directed that the Petitioner's passport be returned to her retaining a Xerox copy thereof.

The Criminal revision is accordingly disposed of.