

(2023) 02 OHC CK 0029

In the Orissa High Court

Case No : Bail Application No. 351 Of 2023

Sureswar Mishra And Another

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 10-02-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 147, 149, 186, 188, 294, 323, 332, 341, 353,
354, 427, 452, 506
Prevention of Damage to Public Property Act, 1984 — Section 3
Criminal Law Amendment Act, 1961 — Section 7

Citation : (2023) 02 OHC CK 0029

Hon'ble Judges : V. Narasingh, J

Bench : Single Bench

Advocate : Asok Mohanty, D. Nayak, B.K. Ragada, L.N. Patel, K.K. Gaya, P.K. Maharaj, A. Pradhan

Final Decision : Disposed Of

Judgement

V. Narasingh, J.

1. Heard Mr. Mohanty and Mr. D. Nayak, learned Senior Advocate for the Petitioners and Mr. Gaya, Mr. Maharaj and Mr. Pradhan, learned Addl. Standing Counsel(s).

2. The Petitioners are accused in G.R. Case No.4941 of 2022, pending on the file of learned S.D.J.M., Sambalpur, arising out of Sambalpur Town P.S. Case No.0481 of 2022, for commission of alleged offences under Sections 147/452/341/ 323/ 353/ 354/ 332/ 506/ 186/ 188/427/294/149 IPC and Section 3 of the PDPP Act and Section 7 of the Criminal Law (Amendment) Act.

3. Being aggrieved by the rejection of their application for bail U/s.439 Cr.P.C. by the learned Additional Sessions Judge-cum-Special Judge (Vigilance) Sambalpur, by order dated 04.01.2023 in the aforementioned case, the present BLAPL has been filed.

4. The genesis is the call of Satyagraha given by District Bar Association, Sambalpur. It is indeed surprising that the Petitioners who are the members of the legal profession chose to ignore the Constitution Bench Judgment of the Apex Court in the case of Ex-Capt. Harish Uppal vs. Union of India & another reported in (2003) 2 SCC 45 wherein the Apex Court while dealing with the malady of strike/boycott by Lawyers has taken note of their exalted stature in the Society and IN RE : Sanjeev Datta, (1995) 3 SCC 619 stated thus :-

"20. The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honorable members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to be maintained by its members by their exemplary conduct both in and outside the Court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilized society. Both as a leading member of the intelligentsia of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The society has a right to expect of him such ideal behavior. It must not be forgotten that the legal profession has always been held in high esteem and its members have played an enviable role in public life....."

5. In the said judgment, the Apex Court has also referred to the immortal words of the legend H.M. Seervai.

"Lawyers ought to know that at least as long as lawful redress is available to aggrieved lawyers, there is no justification for lawyers to join in an illegal conspiracy to commit a gross, criminal contempt of court, thereby striking at the heart of the liberty conferred on every person by our Constitution. Strike is an attempt to interfere with the administration of justice. The principle is that those who have duties to discharge in a court of justice are protected by the law and are shielded by the law to discharge those duties, the advocates in return have duty to protect the courts...."

(Emphasized)

6. Birthday of grand old man of Odisha (Kula Brudha) Madhusudan Das popularly known as Madhu Barrister is celebrated every year in this State on 28th of April as "Lawyers Day". He would have hanged his head in shame and despair knowing that the petitioners-advocates, whose licenses to practice have been suspended by the Bar Council of India, are accused of vandalizing the temple of justice.

7. It is stated on behalf of the Petitioners that there was no premeditation. It is mob fury and it was an expression of collective anger at the disappointment of legitimate local aspirations being not redressed. It is submitted that momentarily the lumpen element got the better of the sanity of the Petitioners and as they have no criminal proclivity, may be released on bail. And more so, when charge sheet has been filed on 8.2.2023.

7-A. The events of 30.11.2022 and 08.12.2022 leading to the unfortunate incident on 12.12.2022 belie the submission of learned Senior Advocate, Mr. Mohanty that it was not premeditated. Rather prima facie seem to be orchestrated by design.

8. Learned counsel for the State on the basis of the recitals in the case diary submits that there are materials on record to indicate that the Petitioners chose to take the law into their hands. Not only caused damage to the property of the Court but also man-handled judicial officers and staff. It is the further submission of the learned Public Prosecutor that by their overt act the Petitioners have undermined the rule of law.

9. Lawyers are an integral part of the justice delivery system. They are the bridge between the justice seekers and courts. Not for nothing, they are referred to as officers of the Court. The alleged conduct of the petitioners is deplorable to say the least. The manner in which they have conducted themselves shocks the conscience of this Court. However, it is the majesty of law reigning supreme that mandates, to treat all accused with an even hand notwithstanding their alleged conduct.

10. The submission of the learned Senior Counsel that the conduct of the petitioners-Advocates is an instance of "more sinned against the sinning" does not hold water and has to be negated in view of the manner in which the overt acts have been committed which is clearly borne out from the statements of Sri Soven Kanungo, Registrar, District Courts, Sambalpur (C.W. 20), Smt. Rosy Tripathy, Civil Judge (Junior Division), Sambalpur (C.W.25) and Smt. Aradhana Sarangi, Senior Civil Judge (Commercial Court), Sambalpur (C.W.27).

11. By their conduct, there is no iota of doubt that the petitioners have undermined the majesty and dignity of the Court and unabashedly put the Presiding Officers and Staff of the Court, even forgetting that there are also lady officers and staff to mortal fear of their life and limb. It is by sheer providence that the judicial officers and staff of the Court did not suffer any serious injury.

12. It is the obligation of all concerned with the justice delivery system, to uphold the dignity of the Court which was unfortunately forgotten by the Petitioners and hopefully momentarily.

13. Yet this Court is alive to the duty cast on it to treat the accused-Petitioners even in the face of allegations which is condemnable, uncompoundable and unpardonable with equanimity.

14. It is the cardinal principle of law that court cannot allow its decision to be swayed by emotions and public sentiments as held by Apex Court in Sanjay Chandra vrs CBI, (2012) 1 SCC 40.

"....Right to bail is not to be denied merely because of the sentiments of the community against the accused...."

15. The criminal jurisprudence of the country is still governed by the age old principle that bail is the rule and jail is the exception - Ref: Nimesh Tarachand Shah vrs. Union of India & another, (2018) 11 SCC 1 and reiterated in the recent exposition of the Apex Court regarding grant of bail in the Case of Satender Kumar Antil vrs CBI & another, (2022) 10 SCC 51.

16. The events in the case at hand impelled the Apex Court to state that "the very edifice of judicial system is sought to be shaken by such disruption and criminal activity carried on by a section of the bar."

16-A. But at the same time the Apex Court reiterated, allaying the misplaced apprehension at the behest of petitioners, the primacy of the law in its prophetic words "....in our view every court acts as per law....". Ref:- Order dated 14.12.2022 passed in T.P.(Civil) No.2419/2019 (M/s. PLR Projects Pvt. Ltd vs. Mahanadi Coal Fields Ltd).

17. Though deeply saddened and anguished by the manner in which the Petitioners who are the members of a noble profession conducted themselves, keeping in view the period of custody, filing of charge sheet, notwithstanding the seriousness of allegation, this Court directs the Petitioners to be released on bail on such terms to be fixed by the Court in seisin.

17-A. Additionally it is directed that the Petitioners

- i. Shall not hold any public meeting relating to the case at hand; and
- ii. Shall not post any opinion/remark/views in print and electronic media including social media relating to the case at hand; and
- iii. Shall not glorify/publicize their release from custody and
- iv. After release shall also submit an undertaking on or before 01.04.2023 not to indulge in any such act of picketing/strike in the Apex Court in terms of the order dated 06.02.2023 in M/s. PLR Projects Ltd. (Supra).

18. It is needless to state that any violation of the aforementioned conditions will entail cancellation of bail in accordance with law.

19. Before parting with the case, this Court fervently hopes that the petitioners by their conduct on release will justify the trust reposed in them and shall not do anything overtly and/or covertly which would undermine the majesty of law.

20. It is apt to state that the observations made herein are only for the purpose of deciding the applications of the petitioners under Section 439 Cr.P.C. It should not be construed as expressing any opinion regarding their complicity which has to be adjudicated independently on the basis of the materials on record.

21. Accordingly, the BLAPL stands disposed of.

22. Urgent certified copy of this order be granted as per the rules.

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