

(2022) 08 OHC CK 0100

In the Orissa High Court

Case No : Bail Application No. 11412 Of 2021

Susanta Kumar Dhalasamanta & Another

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 11-08-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 436A
Indian Penal Code, 1860 — Section 34, 386, 387

Citation : (2022) 08 OHC CK 0100

Hon'ble Judges : Sashikanta Mishra, J

Bench : Single Bench

Advocate : S.K. Padhy, P. Tripathy

Final Decision : Dismissed

Judgement

Sashikanta Mishra, J

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioners and learned Addl. Standing Counsel for the State.
3. The petitioners are in custody since 08.04.2016 having been remanded in connection with Markatnagar P.S. Case No. 43 of 2016 corresponding to G.R. Case number 539 of 2016 of the Court of learned J.M.F.C., Cuttack for the commission of offence under Sections 386/387/34 of IPC.
4. The prosecution's case is that one Sushanta Kumar Swain, a Special Class Contractor, lodged FIR on 29.03.2016 before Markatnagar Police Station alleging that he was entrusted with the work of construction of the road linking Sri Sri University with Naraj a year ago being the successful bidder of the tender floated by R&B Division, Cuttack and also completed the work in the month of January. Thereafter, another work, i.e., construction of boundary wall of RTO fitness centre was entrusted to him and while the said work was going on, one Kulu @Tapan

Kumar Routray, being associate of the petitioners asked him to meet them at their house. When the informant met the petitioners they threatened to kill him unless Dadabati is paid at the rate of 3% to them. The informant paid a sum of Rs.14.5 lakhs to the petitioners and also Rs.50,000/-to the co-accused Kulu. He was threatened not to disclose the matter to anyone. However, the informant subsequently lodged the FIR.

5. It is submitted by Mr. S.K. Padhy, learned counsel for the petitioners that firstly, the petitioners have been entangled in the case without any acceptable evidence. Even otherwise, both of them have spent more than six years in custody by now and trial is yet to conclude. Referring to the provision under section 436-A of Cr.P.C., Mr. Padhy further argues that the offence under section 386 of IPC being punishable with a maximum term of 10 years of imprisonment and the petitioners having spent more than half of such period, are entitled to be released on bail. Mr. Padhy has relied upon the decision of the Supreme Court in the case of Bhim Singh vs. Union of India reported in (2015)13 SCC 605.

6. Mr. P. Tripathy, learned Additional Standing Counsel for the state has vehemently opposed the prayer for bail by submitting that the petitioners are hardened criminals having series of criminal cases against them. Moreover, they were running a crime syndicate in Cuttack exercising control over a network of criminals being involved in all sorts of crimes, such as extortion, tender fixing, murder, assault etc. Since trial has already begun it would not be proper to release the petitioners on bail as, given their criminal background, it is quite probable that they would try to threaten the witnesses or otherwise influence them.

7. I have considered the rival submissions and have also perused the materials on record including the case diary produced by learned State Counsel. There are materials to prima facie, show the complicity of the petitioners in the alleged occurrence. Undoubtedly, the petitioners have been in custody for more than six years. As regards the contention advanced by Mr. Padhy that the provision under section 436-A of Cr.P.C. would be applicable to the case, it would be apt to refer to the said statutory provision at the outset which is quoted herein below:

"436A. Maximum period for which an undertrial prisoner can be detained.—Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.”

8. It is evident that the 1st proviso to Section 436A confers power on the court to order continued detention of the accused despite his detention for more than one half of the maximum period of sentence that could be imposed for the alleged offence. In the instant case, the maximum sentence that can be imposed for the offence under Section 386 is 10 years and therefore, on the face of it, the petitioners have spent more than half of the said period. But then it is also to be considered that the petitioners have multiple criminal cases against their names numbering more than 30, most of which relate to similar offences. They are also involved in graver offences. Trial is in progress with some witnesses being already examined. Some more witnesses remain to be examined. Given the criminal background of the petitioners it is quite probable that if released, they may threaten or otherwise influence the witnesses to be examined in the trial.

9. Having regard to the above facts as also keeping the larger interest of the society in view, I am not inclined to allow the prayer for bail, which is therefore, rejected.

10. The bail application is rejected.

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