
(1988) 01 OHC CK 0011
In the Orissa High Court

The State

APPELLANT

Vs

Pabitra Mohan Sahoo

RESPONDENT

Date of Decision : 05-01-1988

Acts Referred:

Penal Code, 1860 (IPC) — Section 409

Citation : (1988) 65 CLT 299 : (1989) CriLJ 1028

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Judgement

S.C. Mohapatra, J.—While considering the question of granting bail to Bhagabat Prasad Misra in Crl. Misc. Case No. 560 of 1987, I issued notice against accused Pabitra Mohan Sahoo to show cause why the anticipatory bail granted by the learned Sessions Judge, Sambalpur shall not be cancelled. On receipt of notice, the accused appeared through Mr. Ullash Ch. Mohanty, Advocate on 14th of October, 1987. When the matter was listed for orders on 27-11-1987, Mr. Mohanty prayed for adjournment for two weeks. On 15-12-1987, when the matter was listed again Mr. Mohanty took adjournment and adjournment was granted as a last chance. Today when the matter was taken up for hearing, Mr. Mohanty submitted that he has no instruction in the matter. Consequently without the assistance of Mr. Mohanty, I am disposing of this matter.

2. Accused Pabitra Mohan Sahoo has been granted anticipatory bail. The allegation made against him is that while he was a Sarpanch, he misappropriated some amount from gram panchayat fund for which he is alleged to have committed an offence u/s 409, Indian Penal Code, Before his arrest, he applied for being granted anticipatory bail to the learned Sessions Judge. The learned Sessions Judge perused the first information report and found that the contents of the first information report are sufficient to give rise to a reasonable apprehension in the mind of the accused that he would be arrested in a non-bailable offence. Referring to the decision reported in Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, anticipatory bail was granted without discussing

how the principle laid down in the said decision would govern the present case. The only finding is : Till yesterday the petitioner was Sarpanch and chances of his fleeing justice are remote". This is no ground for grant of anticipatory bail. The order not having spoken anything, I am satisfied that the only ground that the accused was at one stage a Sarpanch in which office he is alleged to have misappropriated funds of the gram panchayat is not a sufficient ground to grant anticipatory bail.

3. Grant of anticipatory bail is not a normal feature even where the offence alleged is non-bailable and there is apprehension in mind that the applicant shall be arrested. When wide power is given to the Court, it is to be exercised with restraint. As has been held in the referred to decision:

...Anticipatory bail is a device to secure the individual's liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely.

In paragraph 8, it has been observed by the Supreme Court:

No one can accuse the police of possessing a healing touch nor indeed does anyone have misgivings in regard to constraints consequent upon confinement in police custody. But, society has come to accept and acquiesce in all that follows upon a police arrest with a certain amount of sang-froid, in so far as the ordinary rule of criminal investigation is concerned. It is the normal day-to-day business of the police to investigate into charges brought before them and, broadly and generally, they have nothing to gain, not favours at any rate, by subjecting ordinary criminals to needless harassment. But the crimes, the criminals and even the complainants can occasionally possess extraordinary features. When the even flow of life becomes turbid, the police can be called upon to inquire into charges arising out of political antagonism. The powerful processes of criminal law can then be perverted for achieving extraneous ends. Attendant upon such investigations, when the police are not free agents within their sphere of duty, is a great amount of inconvenience, harassment and humiliation. That can even take the form of the parading of a respectable person in hand-cuffs, apparently on way to a Court of justice. The foul deed is done when an adversary is exposed to social ridicule and obloquy, no matter when and whether a conviction is secured or is at all possible. It is in order to meet such situations, though not limited to these contingencies, that the power to grant anticipatory bail was introduced into the Code of 1973.

In case the learned Sessions Judge would have given a finding keeping the aforesaid object in mind, I would not have interfered with the matter to substitute my own views in exercise of the power of cancellation of bail. Since I find from the order that the learned Sessions Judge while referring to the decision has not kept in mind the object behind the vesting of wide power in him and has not discussed how there is likelihood of misuse of the police power, the order suffers from impropriety and bail granted on the basis of such order is

liable to be cancelled.

4. The investigating agency is free to arrest the accused if and when such occasion legally arises. Cancellation of bail by me shall not be a circumstance not to consider the application for bail if moved after the accused is arrested and produced in Court or he surrenders to the custody of the Court and moves for bail.

5. In the result, the rule issued is made absolute. Send a copy of this order to the learned Sessions Judge, Sambalpur for information of the investigating agency.