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**Surendra Kumar Samal Vs. State and anr.**

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**SooperKanoon Citation** : sooperkanoon.com/527561

**Court** : Orissa

**Decided On :** Mar-15-2005

**Reported in** : 2005(I)OLR588

**Judge** : R.N. Biswal, J.

**Acts** : Code of Criminal Procedure (CrPC) , 1973 - Sections 439(2); Indian Penal Code (IPC) - Sections 34, 323 and 379

**Appeal No.** : CRLMA No. 47 of 2004

**Appellant** : Surendra Kumar Samal

**Respondent** : State and anr.

**Judgement** :
ORDER

**R.N. Biswal, J.**

1. This CRLMA is filed under Section 439(2) of Cr.P.C. with a prayer to cancel the bail granted in favour of accused-opp. Party No. 2 by the learned J.M.F.C., Barbil in G.R. Case No. 124 of 2004 on 25.3.2004. Opp.Party No. 2 and some others have been arrayed as accused in the aforesaid G.R. Case for the offence under Sections 379/323/34 I.P.C.

2. On a petition for bail filed on behalf of the accused-opp.Party No. 2 the J.M.F.C., Barbil released him on bail on 25.3.2004 holding that the offences are bailable in nature while in fact Section 379 I.P.C. is a non-bailable one. Hence the petition for cancellation of the bail order.

3. None appeared on behalf of the accused-opp.Party No. 2 when the matter was taken up.

4. It is submitted by learned counsel for the applicant that even though the offence under Section 379 I.P.C. is non-bailable in nature, the Court below carelessly held it to be a bailable offence and accordingly released the accused-opp.Party No. 2 on bail.

5. The J.M.F.C., Barbil allowed the bail petition filed by the accused-opp.Party No. 2 on an erroneous impression that the offence under Section 379 I.P.C. is bailable in nature. But, in fact it is a non-bailable one.

6. Accordingly, the bail order dated 25.3.2004 passed by the J.M.F.C., Barbil in G.R. Case No. 124 of 2004 in favour of opp.Party No. 2 is hereby cancelled.

7. Accused-opp.Party No. 2 shall surrender before the Court of J.M.F.C., Barbil within one month hence, failing which the Court concerned shall take appropriate steps to secure his attendance. After his surrender or production before the Court below, if he applies for fresh bail, the same shall be considered on its own merit in accordance with law.

8. The CRLMA is disposed of accordingly.

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