

Ramakrishna Pujhari Vs. State of Orissa and Others

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Court : Orissa

Decided On : Apr-19-2001

Reported in : 92(2001)CLT339

Judge : P.K. Tripathy, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 107 and 439(2);
[Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Misc. Case No. 241 of 1999

Appellant : Ramakrishna Pujhari

Respondent : State of Orissa and Others

Advocate for Def. : M/s P.K. Mohanty, ;B.P. Ray, ;J. Pujahari, ;K.S. Panda and ;R.K. Pattnaik, ;S.K. Nanda, Advs. and ;Mr. S.B. Pradhan, A.S.C.

Advocate for Pet/Ap. : M/s S.K. Mund, ;D.P. Das and ;J.K. Panda, Advs.

Disposition : Crl. misc case disposed of

Judgement :

ORDER

1. Heard.

2. The informant in Sessions Case No. 74 of 1998 of the Court of Sessions Judge, Kalahandi-Nuapada at Bhawanipatna has filed this application under sections 147/148/307/302/149/323, I. P. C, with the prayer to cancel the bail granted in favour of opposite party members 2 to 10.

3. Petitioner's contention is that on the basis of the F. I. R. lodged, Junagarh P. S. Case No. 91 of 1997 was registered which corresponds to G. R. Case No. 353 of 1997 in the Court of S. D. J. M., Dharmagarh. After being committed to the Court of Session, the same has been registered as Sessions Case No. 74 of 1998. He further states that because of the attack and injuries inflicted by the opposite party members the deceased succumbed and, therefore, the case was registered and charge-sheet was filed for the offences punishable under sections 147/148/302/307/149/ 323, I. P. C.. During the pendency of the proceeding in the courts below, prayer for bail of the opposite parties 4, 5, 6 and 7 was allowed by learned Sessions Judge, vide order dated 25-10-1997 in Criminal Misc. Case No. 166 of 1997. In that order, learned Sessions Judge found a strong prima facie case against the accused persons (petitioners in that bail application), but while allowing opposite party Nos. 4 to 7 to go on bail, rejected the prayer for bail of opposite party Nos. 2 and 3. On the further application for bail filed by the opposite parties 2 and 3 vide Criminal Misc. Case No. 223 of 1997, both of them were allowed to go on bail vide order dated 19-12-1997 of the learned Sessions Judge. On 16-3-1998, opposite party Nos. 8 and 9 were allowed to go on bail by learned Sessions Judge as per his order in Criminal Misc. Case No. 56 of 1998. Similarly, on 21-8-1998 learned Sessions Judge allowed opposite party No. 10 to go on bail as per order in Criminal Misc. Case No. 235 of 1998.

4. Learned counsel for the petitioner argues that in the aforesaid orders granting bail to the opposite party members, learned Sessions Judge though recorded his finding regarding existence of a prima facie case for the offence punishable u/s. 302, I. P. C. as against the accused persons, yet he allowed them to go on bail without assigning any reason, much less good reason. In view of that, according to learned counsel for the petitioner, learned Sessions Judge by arbitrary exercise of the jurisdiction vested in him, passed the aforesaid bail orders without due application of mind. Thus, the petitioner prays for cancellation of bail on that

ground.

5. In addition to that, petitioner also relies on the circumstances that after being released on bail the opposite party members have repeatedly threatened and terrorised the informant and the prosecution witnesses, for which several Station Diary entries were made. According to him, the opposite party members have misused the liberty granted to them and, in view of that, the bail granted to the petitioners (opposite party members in this case) be cancelled.

6. Learned Addl. Standing Counsel placing the report of the O. I. C. which has been called for by this Court, states that because of such report lodged by the informant, inquiry was conducted and ultimately several prosecution reports u/s. 107, Cr. P. C. were lodged against both the parties.

7. Learned counsel appearing for the opposite party members 2 to 10, on the other hand, states that the allegation of overt act alleged against them is absolutely false. The station diary entries were made by the informant and his supporters between August, 1998 to September, 1998 only with a view to pursue this application u/s. 439(2), Cr. P. C. and, therefore, there is no genuineness in that allegation. He further states that learned Sessions Judge granted bail to the opposite party members on due consideration of the materials on record. Accordingly, he argues that the order of bail granted in favour of opposite party No. 2 to 10 may not be cancelled.

8. Keeping in view the aforesaid contention and to allow a smooth trial of the sessions trial on being asked by this Court, learned counsel for the petitioner states the said opposite party Nos. 2 to 10 shall abide by any further condition which shall be imposed by this Court, if necessary.

9. On due consideration of the contention advanced by the parties and after perusal of the bail orders passed by the Sessions Judge in the above noted Criminal Misc. Cases, this Court finds that learned Sessions Judge has passed those orders whimsically and without due application of mind in as much as after recording existence of a prima facie case at one stage in such order, he should not have allowed the accused persons to go on bail without recording the reason for

which he considered that appropriate to allow the accused of a heinous crime like murder, to go on bail. It be noted here that learned Sessions Judge has not assigned any reason while allowing the prayer for bail. Because of that, this Court is of the view that learned Sessions Judge passed the aforesaid bail orders by illegal and improper exercise of jurisdiction vested on him. Since the concerned Presiding Officer is no more in service, therefore this Court doesnot propose to call for explanation for passing such whimsical, arbitrary and capricious bail order.

10. Be that as it may, the report of the Police Officer indicates about taking steps to initiate proceedings under section 107, Cr. P. C. against the accused party as well as the informant party. Therefore, a clear picture about probable circumstance is not emerging relating to the supervening circumstance which can have the effect of prompting this Court to cancel the bail granted to the opposite party No. 2 to 10.

11. Trial of the sessions case has been stayed by this Court because of pendency of this case. The whole object behind the prayer for cancellation of bail is to seek a fair trial by allowing the prosecution witnesses to depose in a free mind, i.e., without fear or terror from the side of the accused. If that can be achieved by imposing suitable additional conditions, then there is no necessity of cancellation of bail at this stage notwithstanding the fact of the above noted lacuna in the orders of bail of the learned Sessions Judge. Learned counsel for the opposite party Nos. 2 to 10 states that the opposite party members shall be abided by any further condition which this Court shall feel just and proper to be imposed in addition to the existing conditions. Thus, the following additional conditions are imposed :--

(i) each of the opposite party members 2 to 10 shall undertake to appear before the O. I. C., Junagarh P. S. once in a fortnight, i.e., on the 1st and 16th day of every calender month; between 10 to 11 a. m. ;

(ii) each of the opposite party members 2 to 10 shall undertake not to indulge in any other crime or criminal case while in bail in the above noted sessions case.

12. As it is felt, the aforesaid two conditions are sufficient to take care, of the situation for the present. The O. I. C., Junagarh P. S. shall keep a close watch on the activities of the opposite party members and if there shall be any report of any overt act or criminal activities by any or all the opposite party members, then such fact with due and prompt enquiry be reported to the learned Sessions Judge, Kalahandi-Nuapada at Bhawani-patna, for appropriate action, In the event any such report shall be received by learned Sessions Judge, then he shall conduct a summary enquiry by affording opportunity of bearing to both the parties and by virtue of this order he shall cancel the bail and remand the opposite party members to the jail if he shall find violation of any of the aforesaid two conditions by any of the opposite party members. The opposite party members 2 to 10 shall execute the bail bonds with their surety within a period of fifteen days hence stipulating the aforesaid conditions.

The Criminal Misc. Case is accordingly disposed of. Communicate a copy of this order to the Court below immediately. Petitioners shall also produce an authenticated copy of this order before the O. I. C, of Junagarh P. S. for information and necessary action.

13. Crl. misc. case disposed of.