

State of Orissa Vs. Manoj Kumar Singh Alias Manoj Singh

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Court : Orissa

Decided On : Jul-24-2003

Reported in : 96(2003)CLT446; 2003(II)OLR250

Judge : A.S. Naidu, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 437, 439 and 482

Appeal No. : CRLMC No. 1082 of 2003 and BLAPL No. 4885 of 2003

Appellant : State of Orissa;manoj Kumar Singh

Respondent : Manoj Kumar Singh Alias Manoj Singh;The State

Advocate for Def. : Addl. Standing Counsel (In BLAPL) and ;G. Tripathy & Associates (In CRLMC)

Advocate for Pet/Ap. : Addl. Standing Counsel (In CRLMC) and ;G. Tripathy & Associates (In BLAPL)

Disposition : Application allowed

Judgement :

A.S. Naidu, J.

1. The cardinal question which needs determination is :

'As to whether production of an accused in Court is sine qua non for releasing him on bail under Section 439 of the Code of Criminal Procedure.'

2. Before answering the said question, it would be worthwhile to have a bird's eye view on the facts of the case.

One Manoj Kumar Singh, a resident of Bihar, was alleged to have gunned down one Harbanslal Bedi, a railway contractor, on 27th of October, 1999 at about 9.30 a.m. An FIR to that effect was lodged by the son of deceased at Bandhamunda GRPS, Rourkela on the same day. On the basis of that, GRPS Case No. 33 of 1999 was registered under Sections 302/120-B/201/34 IPC read with Section 25 of the Arms Act. The case was subsequently converted to G.R. Case No. 1736 of 1999 in the Court of the S.D.J.M., Panposh, Rourkela. In course of investigation it was prima facie revealed that said accused Manoj was a professional killer who was usually engaged by different persons on hire to kill persons as a 'Supari Killer' and that he was facing as many as thirtyone criminal cases including the present case. A chart to that effect was filed in Court by the State.

Accused Manoj was convicted by the Addl. Sessions Judge, Chainbasa, Bihar in S.T. No. 229 of 2000 and was sentenced to undergo rigorous imprisonment for life. Against the said order of conviction and sentence, the accused preferred appeal being Criminal Appeal No. 314 of 2001 which is now sub judice in the High Court of Jharkhand.

After completion of investigation, with much difficulty, police could trace out the whereabouts of accused Manoj and ascertained that he was undergoing sentence at Chainbasa Jail. It also appeared that the High Court of Jharkhand had granted accused Manoj interim bail for treatment of his ailment at AIIMS as he was allegedly suffering from serious ailment (brain tumour) and required neuro-surgery.

3. While matter stood thus, a Bail Application was filed before the Addl. Sessions Judge, Rourkela being Bail Application No. 69 of 2003 and on 25.2.2003 the Addl. Sessions Judge allowed the accused to go on interim bail of Rs. 5,00,000.00 (five lakhs) with two sureties, each for the like amount to the satisfaction of the S.D.J.M., Rourkela and also on depositing a sum of Rs. 50, 000.00 in cash in the

Court of the S.D.J.M., Rourkela. The said order stipulated that the accused should surrender in Court on 12.5.2003.

4. Thereafter an application was filed before this Court under Section 439(1)(b), Cr.P.C. for modification of the conditions imposed by the Court below while granting interim bail and the said application was registered as CRLMA No. 12 of 2003. In course of hearing, however, on 12.5.2003 learned counsel for the petitioner prayed for withdrawal of the said application and accordingly the same was dismissed as withdrawn. Another petition was thereafter filed before the Addl. Sessions Judge, Rourkela by the accused stating that he was agreeable to comply with the direction issued by the said Court while releasing him on interim bail, and prayed that as the date fixed for surrender, i.e. 12.5.2003, had already expired, he should be released on bail for a period of four months from the date of his release. In the meanwhile the state filed the present CRLMC No. 1082 of 2003 challenging the order dated 25.2.2003 of the Addl. Sessions Judge, Rourkela in Bail Application No. 69 of 2003 granting interim bail to the accused. The Addl. Sessions Judge by his order dated 5.6.2003 rejected the petition of the accused praying to release him on interim bail, observing that as the State had preferred a petition for cancellation of bail granted by the said Court and the same was sub judice, it would not be expedient nor proper to release the petitioner on bail at that juncture of time and the Court should wait till orders were passed by the High Court in the Misc. Petition.

The accused has preferred BLAPL No. 4885 of 2003 with a prayer to release him on bail for a period of four months.

Both the matters were heard together for the sake of convenience and are disposed of by this common order.

5. Learned counsel for the State in support of the prayer for cancellation of interim bail granted to the accused by the Addl. Sessions Judge, Rourkela forcefully submitted that as the accused was never produced before the Court at Panposh, Rourkela, nor was arrested in connection with G.R. Case No. 1736 of 1999, the Addl. Sessions Judge lacked initial jurisdiction to entertain the application filed by the accused under Section 439, Cr.P.C. and to grant an order of interim bail.

According to the learned State Counsel, the said order suffers from initial lack of jurisdiction and should be cancelled.

6. Dr. Tripathy, at the other hand, submitted that the production/ appearance of the accused before a Court is not necessary for exercising the power under Section 437 or 439, Cr.P.C. According to him, Section 437, Cr.P.C. stipulates that when a accused suspected of commission of a non-bailable offence is arrested or detained without warrant by the O.I.C of a police station or appears or is brought before a Court of session, he may be released on bail. According to Dr. Tripathy, if an accused is arrested or detained without warrant, he can be released on bail and his production in Court is not mandatorily required.

7. Law is well settled that the pre-requisite condition for releasing an accused on bail is that he should be in custody. The term 'custody' means actual imprisonment or physical detention. When an accused is arrested and produced before a Magistrate and/or surrenders before a Magistrate and moves for bail under Section 437, Cr.P.C., the same has to be considered. If the bail application is rejected, he has a right to approach the Court of session under Section 439, Cr.P.C.; provided that he is in custody. Except the cases where an accused is under protection against arrest by an order of anticipatory bail under Section 438, the accused is bound to remain in custody. Even when he is under protection against arrest, he is deemed to be in judicial custody.

8. This Court in the case of *Indrajit v. Republic of India*, 1977 (II) OLR 499, has elaborately dealt with the procedure to be followed while entertaining an application under Section 437 or 439, Cr.P.C. 'Custody' in the context of Section 437 and Section 439, Cr.P.C. connotes physical control or at least physical presence of the accused in Court, coupled with submission to the jurisdiction and orders of the Court, that too in connection with the case which is pending in the said Court. Arrest in respect of some other offence cannot be construed to be arrest in respect of the offence for which bail is moved.

As has been held in the case of *Niranjan Singh and Anr. v. Prabhakar Rajaram Kharote*, AIR 1980 SC 785, no person accused of an offence can move the Court for bail under Section 439 unless he is in custody. 'Custody' in the context of

Section 439 is physical control or at least physical appearance of the accused in Court coupled with submission to the jurisdiction and orders of the said Court.

9. A bail can be granted to an accused only if he is in custody. When a person is arrested or detained or is brought before a Court, he is under a restraint. The words 'arrested' and 'detained' are used to signify 'arrest' and 'detention' by the police officer. The expressions 'appears' and 'is brought' are used to signify appearance and arrest in obedience to a process of the Court.

10. In view of the ratio of the decision of this Court as also the Apex Court (supra), the conclusion is irresistible that before entertaining a bail application either under Section 437 or 439, Cr.P.C., the accused has to be either arrested in respect of the said case and produced before the Court where the bail application is moved, or he has to surrender before that Court. Issuance of N.B.W. and/or a production warrant simpliciter would not satisfy the mandatory requirement of law. When a person accused or of suspected of commission of a non-bailable offence appears before a Magistrate and surrenders or submits himself to the jurisdiction and orders of the Court, he shall be deemed to be in custody.

11. My answer thus is that arrest, production or surrender of an accused in the Court where a cognizable case is pending against him is sine qua non for entertaining a bail application under Section 437 or 439, Cr.P.C. by the said Court. Further, such arrest or surrender must be in connection with the case pending in the said Court or the court subordinate to it.

12. The submission of Dr. Tripathy is thus not acceptable. Learned Addl. Sessions Judge, Rourkela had no authority to release the accused on bail specially in view of the fact that the accused was neither arrested in connection with G.R. Case No. 1736/99 nor produced before the S.D.J.M. or before the Court of Session.

Accused Manoj was never arrested in connection with G.R. Case No. 1736/99 nor was he in custody in connection with that case when the Bail Application was moved. Thus none of the ingredients of Section 437 are also satisfied.

13. In the result, CRLMC No. 1082 of 2003 filed by the State is allowed and the order granting interim bail to the accused, though has spent its time, is declared to be non est in the eye of law. BLAPL No. 4885 of 2003 is dismissed.

A Memo, was filed by accused Manoj supported by an affidavit to the effect that in the meanwhile he has been produced before the C.J.M., Rourkela on the strength of a production warrant issued by the S.D.J.M, Rourkela and he has been remanded again to Chainbasa Jail. If the fact is correct, it is open to accused Manoj to move the Court below for bail in consonance with law.

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