

Jagili Das and ors. Vs. the State

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Court : Orissa

Decided On : May-06-1992

Reported in : 74(1992)CLT278; 1993CriLJ1408

Judge : S.C. Mohapatra, J.

Acts : Indian Penal Code (IPC) - Sections 34, 302, 323, 325 and 506

Appeal No. : Criminal Misc. Case No. 302 of 1992

Appellant : Jagili Das and ors.

Respondent : The State

Advocate for Def. : Debasis Das, Public Prosecutor

Advocate for Pet/Ap. : S.K. Nayak, ;B. Routray, ;N.K. Sahu, ;K.B. Kar and ;R.K. Das, Advs.

Disposition : Application dismissed

Judgement :

ORDER

S.C. Mohapatra, J.

1. This is an application for bail by four accused persons charge-sheeted for offences under Sections 302/325.323/506, I.P.C. read with Section 34, I.P.C.

2. Absence of overt act of petitioners 2 to 4 as per statements recorded is the main ground for support of grant of bail. I am not inclined to accept the same. As revealed from statements there was party faction. Accused persons were armed with lathies at about 8 p.m. in the night. No sooner they saw the deceased petitioners assaulted and others instigated to kill him.

3. Unity for welfare of society is laudable. Such united action to take law to hand and to do away with a person who is depicted to be turbulent is blameworthy. In case, the facts are proved, crime is heinous in nature. Peace and tranquility of villagers would be affected by unholy alliance of a few. Thus offences committed are anti-social in nature.

4. In case petitioners are convicted of the offences attributed each one would have to serve life sentence. Nature of sentence prescribed also make the offences grave.

5. If the joint action could take away life of the person, it is no wonder that the witnesses may be terrorised to speak out their version with immunity. This may amount to interference with evidence. This is also a ground to refuse bail.

6. After hearing Mr. Kar, learned counsel for petitioners, I am satisfied that all the considerations as laid down in AIR 1962 SC 253 : (1962 (1) Cri LJ 215) (The State v. Jagjit Singh) are satisfied in this case. Observations in various decisions of the Supreme Court would be of no assistance to the petitioners in this case.

7. I am well aware that valuable fundamental right of accused persons are affected. Facts of this case, however, lead me to belief that with the consortium of the accused persons as alleged and believed by villagers, their liberty and life would be at a stake since one has lost his life already. Life is more valuable than liberty. In such cases a balance is to be struck between lives of innocent villagers who happen to be of a rival group and liberty of accused persons.

8. Detention of accused persons in this case is a normal rule. It is not a pre-trial conviction. To be in a society peacefully one has to make the small sacrifice of his liberty when non-bailable offence is attributed to him. There is no allegation of the

first informant or group supporting her are influential enough to mislead the investigation agency in forming opinion about the prima facie case against accused. It is not the case of accused persons that accepting all the statements recorded and materials collected, any of the petitioners are not likely to be convicted in a non-bailable offence. In such circumstances, absence of overt act is not a ground to release the petitioners on bail.

9. In result, application for bail of all the accused persons is rejected.

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