

Bichitrananda Muduli Vs. State of Orissa

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Court : Orissa

Decided On : Jul-12-2001

Reported in : 2001(II)OLR205

Judge : M. Papanna, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 439; Prevention of Corruption Act - Sections 13(1) and 13(2); Indian Penal Code (IPC) - Sections 120B, 420, 468 and 471

Appeal No. : Criminal Misc. Case No. 5014 of 2001

Appellant : Bichitrananda Muduli

Respondent : State of Orissa

Advocate for Def. : J.K. Mishra, Standing Counsel (Vigilance)

Advocate for Pet/Ap. : S.C. Parija, P. Behera and M.R. Tripathy

Judgement :

M. Papanna, J.

1. This is a petition Under Section 439 of the Code of Criminal Procedure filed by the petitioner with a prayer to enlarge him on bail in T.R.No. 26 of 2001 arising out of Bhubaneswar Vigilance P.S. Case No. 43 of 2000 now sub-judice before the

learned Special Judge (Vigilance), Bhubaneswar.

2. Petitioner is a retired Chief Engineer, Rural Works. Bhubaneswar. Tersely put, the pith of the charge levelled against him is that he helped his son, Nalinikanta Muduli, who is one of the accused in this case, to obtain licence as a Special Class Contractor. That apart, co-accused Karunakar Mohanty, a Special Class Contractor being influenced by the present petitioner, issued a false experience certificate in favour of the said Nalinikanta Muduli to the effect that he is a Graduate Engineer basing on which he was granted licence as a Special Class Contractor. It is further alleged that the Committee of Chief Engineers, of which the petitioner happened to be one of the members, renewed the licence of the petitioner's son for which he was instrumental and thereby abusing his official power in securing undue benefit for his son, an act which is punishable Under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and also punishable Under Section 120B, 420, 468 and 471. I.P.C. On the information lodged by the Inspector of Police, Vigilance Cell, Bhubaneswar, the aforesaid Vigilance case has been registered against the petitioner along with two others named above who have been charge sheeted after investigations is concluded.

3. Learned Counsel, Shri S.C. Parija, is representing the petitioner whereas Shri J. K. Mishra, learned Standing Counsel for the Vigilance Department is representing the State. In course of hearing the learned Standing Counsel for the Department has vehemently opposed to grant bail to the petitioner on the ground that the petitioner had conspired with the co-accused with a view to cheating the authority deceitfully by forging certain documents and making use of the same knowing the same to be forged in order to secure financial benefit in favour of his son, in support of which he relies on statements of witnesses including the members of the Committee of Chief Engineers recorded Under Section 161. Cr. P.C. by the I.O. during the investigation of the case. That apart, relying on A.I.R. 1978 S.C. 179 Raj Kumar Sharma and Ors. v. State (Delhi Administration) he has drawn my attention to the over-riding considerations in granting bail to which the Apex Court adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1), Cr.P.C. of the new Code. They are the nature and gravity of the circumstances in which the offence is committed; the position and status of the

accused with reference to the victim and the witnesses; the likelihood of the accused fleeing from justice; of repeating the offence of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses: the history of the case as well as of its investigation and other relevant grounds which, in view of so many variable factors, cannot exhaustively set out.

4. On the other hand, the learned counsel. Shri Parija for the petitioner submits that the allegations made in the F.I.R. do not constitute neither criminal conspiracy nor cheating for forgery alleged to have been committed by the present petitioner in furtherance of his common intention with the co-accused of whom accused Karunakar Mohanty who is alleged to have given a false experience certificate in favour of the son of the petitioner, has been enlarged on bail by this Court on the self-same facts and that being so, the present petitioner who has been detained unnecessarily in the jail custody on some false accusation should be granted bail on any condition which the Court deems fit and proper.

5. Having given a patient hearing to the learned counsel appearing for both the sides, perusing the materials available on record and also regard being had to the orders of this Court as well as that of the learned Special Judge (Vigilance), Bhubaneswar, I am of the view that the power of the Special Judge. Bhubaneswar to consider an application for bail Under Section 439, Cr. P.C. cannot be said to have been taken away merely because in course of investigation and even thereafter submission of the charge sheet. the application for bail made by the petitioner was rejected by the High Court. In this regard, reliance can be placed on 1993 (I) OLR 298. Chandramani Swain v. State of Orissa. In the present case after his application for bail was rejected by this Court, he made successive application in CrI. Misc. Case No. 3242 of 2001. It was disposed of by His Lordship Hon'ble the Chief Justice Shri N. Y. Hanumanthappa, who directed him to be released on interim bail imposing stringent conditions and ultimately to surrender before the learned Special Judge (Vigilance), Bhubaneswar, for his remand to the judicial custody. The petitioner complied with all the directions issued by the Court. After he surrendered before the learned trial Judge, the latter remanded the former to the jail custody. Even thereafter when the petitioner moved for regular bail Under

Section 439, Cr.P.C. before the said Court, his prayer was turned down though his power to consider the bail application Under Section 439, Cr.P.C. was not taken away merely because in course of investigation and even subsequently thereafter his application for bail was rejected by this Court.

6. Of course, the learned Special Judge (Vigilance), Bhubaneswar has already taken cognizance of the offences after charge sheet was laid against the accused persons holding that there is a prima facie case made out against them under the above sections of law but he should remember that he has not even come to the conclusion that the allegations made in the F.I.R. are true which can be decided and determined only at the conclusion of trial which involves a lot of time particularly in vigilance cases and that being so, I am of the considered opinion that the petitioner cannot be detained in the jail custody for a long time without conviction in this case. 2000 AIR SCW 248, Sandeep Jain v. National Capital Territory of Delhi represented by the Secretary, Home Department, may be referred to in this regard. In A.I.R. 1979 S.C. 1360 Hussainara Khatoon and Ors. v. Home Secretary, State of Bihar, Patna, the apex Court has taken the view that the primary principle of criminal law is that the imprisonment may follow a judgment of guilt. But should not precede it. But there is another principle which makes it desirable to ensure that the accused is present to receive his sentence in the event of being found guilty. In the aforesaid case, the Apex Court has also ruled that in regard to the exercise of judicial power to release a prisoner awaiting trial on bail or on the execution of a personal bond without sureties for his appearance the Court has to say this briefly. There is an amplitude of power in this regard within the existing provision of the Code of Criminal Procedure and it is for the Courts to fully acquaint themselves with the nature and extent of their discretion in exercising it and it is no longer possible to countenance a mechanical exercise of the power. What should be the amount of security required or the monetary obligation demanded in a bond is a matter calling for the careful consideration of several factors. The entire object being only to ensure that the under trial does not flee or hide himself from trial, all the relevant considerations which enter into the determination of that question must be taken into account. A synoptic impression of what the considerations could be may be drawn from the provision in the United States Bail Reform Act of 1966.

7. In A.I.R. 1977 S.C. 2447. the State of Rajasthan v. Balchand, the Apex Court has held as follows :

'The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative.'

8. In the present case, the petitioner seeks for pre-trial release in a case where co-accused Karunakar Mohanty involved therein for having issued a false experience certificate in favour of the son of the petitioner, has been released on bail. In such a case, the petitioner who has been in jail for a long time should not be further incarcerated. Moreover, in the present case there is probability of trial of the case being delayed and also because of his long and continuous incarceration, he cannot prepare his defence and perhaps it is quite impossible for him to tamper with the evidence of witnesses, who are mostly official witnesses of high rank and statute.

9. Therefore, regard being had to the nature of the offence, character and strength of evidence and circumstances which are peculiar to the petitioner, reasonable possibility of the presence of the petitioner being secured at the trial, absence of reasonable apprehension of the witnesses being tampered with larger interest of the public or the State, opportunity to the petitioner to prepare his defence and the period of detention of the petitioner and probability of delay, I am of the considered opinion that it is a fit case where the petitioner is entitled to be released on bail.

10. In that view of the matter, the petitioner is directed to be released on bail of Rs. 50,000/- (Rupees fifty thousand) with two local solvent sureties each for the like amount to the satisfaction of the learned Special Judge (Vigilance), Bhubaneswar, subject to the condition that he shall return to the Court during trial and receive sentence of imprisonment on being found guilty of the charges levelled against him. That apart, he shall personally attend the trial Court on each date till conclusion of trial and that he shall not leave the territorial jurisdiction of the trial Judge without his prior permission.

The Criminal Misc. Case is disposed of.

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