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Court : Orissa

Decided On : Oct-01-2008

Reported in : 2008(II)OLR861

Judge : L.K. Mishra, J.

Appellant : Mithu Barma

Respondent : State of Orissa

Disposition : Application allowed

Judgement :

L.K. Mishra, J.

1. Even though the case has been listed for admission today, on the prayer and consent of learned Counsel for the parties, it is taken up for final disposal.
2. Heard learned Counsel for both sides.
3. The petitioner is accused of having committed offence under Section 412 of I.P.C. in G.R. Case No. 418 of 2008 of the Court of learned S.D.J.M., Bargarh, in connection of which he was granted bail by the learned Addl. Sessions Judge, Bargarh in B.A. No. 370 of 2008 vide order dated 4.8.2008 with nine conditions out of which condition Nos. (i) and (ii) are as follows:

(i) He be released on bail of Rs. 25,000/- with two local sureties of the like amount each to the satisfaction of S.D.J.M., Bargarh, subject to the condition that Sureties shall be person of unimpeachable conduct. Income Tax Assessee having PAN number and permanent resident of Bargarh town.

(ii) He has to deposit a sum of Rs. 25,000/- towards cash security.

Subsequently on the prayer of the petitioner, vide order dated 20.8.2008 in B.A. No. 409 of 2008, the learned Addl. Sessions Judge reduced the cash security to Rs. 10,000/-. The aforementioned conditions are impugned in this CRLMA under Section 439(1)(b) of the Code of Criminal Procedure (in short 'the Cr.P.C).

4. It is submitted on behalf of the petitioner that the petitioner is not able to arrange local sureties who are also an Income Tax Assessee having PAN number and that he is not able to arrange Rs. 10,000/- towards cash security. Imposition of such conditions according to him has virtually resulted in denial of bail to the petitioner and therefore, should be set aside.

Learned Addl. Standing Counsel has supported the impugned orders saying that it is justified in the facts and circumstances of the case.

5. Before proceeding further, I feel that a glaring mistake committed by the learned Court below needs correction. Vide order dated 20.8.2008 in B.A. No. 409 of 2008 the learned Addl. Sessions Judge reduced the cash security to Rs. 10,000/-. As per the provisions of Section 439(1)(b) of Cr.P.C. any conditions imposed by a Magistrate when releasing any person on bail can be set aside or modified by a Court of Sessions or the High Court. The power is not available to the Court of Session to modify its own order. It can be so done only by the High Court. On this point reference may be made to a decision of this Court in the case of K. Satyanarayan Subudhi v. Union of India (1992) 5 OCR 155.

In fit cases conditions may be imposed by the Court granting bail to the accused in order to ensure that the accused will not tamper with the evidence, will not repeat the offence or will not abscond. Necessarily the nature of the surety may be prescribed in the bail order itself. However, to insist that the surety must also be an

Income Tax Assessee having PAN number is carrying the matter a bit too far. Under the given circumstances, as in this case, it may virtually amount to denial of bail. So is the case in the case of cash security. Cash security should be insisted only in cases where there is real apprehension of absconding of the accused or his repeating the offence since it acts as an effective deterrent. In the present case I do not feel any need for cash security.

6. Having regard to the facts and circumstances of the case, I feel that interest of justice would be served if the condition No. (ii) is set aside and condition No. (i) is modified to the extent that the petitioner shall be released on bail of Rs. 25,000/- (twenty five) with two solvent local sureties for the like amount to the satisfaction of the S.D.J.M., Bargarh.

The CRLMA is allowed.

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