

Reena Dutta Vs. State of Orissa

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Court : Orissa

Decided On : Oct-01-2008

Reported in : 2008(II)OLR872

Judge : L.K. Mishra, J.

Appellant : Reena Dutta

Respondent : State of Orissa

Advocate for Pet/Ap. : Sri. Biplab Kumar Dash

Judgement :

ORDER

L.K. Mishra, J.

1. The petitioner is an accused in G.R. Case No. 1633 of 2006 pending in the Court of learned S.D.J.M., Bhadrak involving offence under Sections 468/417/409/506 of the Indian Penal Code (herein-after called the 'I.P.C.'). She was earlier granted interim bail for a period of two months by this Court. This order relates to her prayer for regular bail.

2. Heard Sri Biplab Kumar Dash learned Counsel for the petitioner and learned Addl. Standing Counsel for the State on the question of bail.

3. The petitioner is working as Asst. Manager, Customer Care in Balasore Mercantile Credit Co-operative Ltd., Bhadrak Branch (here-in-after called 'BMCC Ltd.'). Initially F.I.R. was lodged on 16.11.2006 by Shri S.N. Mahapatra, Chief Executive Secretary of BMCC Ltd. against Shri B.N. Padhy, Branch Manager alleging financial irregularities and misappropriation to the tune of Rs. 1.80 crores. During investigation involvement of some other persons including the present petitioner came to the notice of the I.O. for which she was arrested and was forwarded to the Court. Her petition for bail was rejected by the Court below occasioning the present petition for bail under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C for short).

4. At the out-set the learned Addl. Standing Counsel appearing on behalf of the State raised a legal objection that the petitioner was granted interim bail for a period of two months and therefore, is not in custody at present and that custody being a prerequisite for exercise of power under Section 439 Cr.P.C, unless somebody is in custody he cannot be granted bail. It necessitates her surrender into custody after which only the bail petition can be taken into consideration.

5. The point is no longer res Integra in view of decision of the Supreme Court reported in (2007) 36 OCR (SC)-60 : Kanaksinh Mohartsinh Mangrola v. State of Gujarat, wherein it has been categorically laid down that when an accused has been granted interim bail and on the date of granting such bail, if he was in custody then his regular bail application can be considered without his surrendering into custody again and such an application cannot be rejected on the ground that the accused was not in custody. In that view of the matter though the petitioner has not surrendered and taken into custody, her application for bail is maintainable.

6. Learned advocate for the petitioner has submitted that the petitioner is an woman and is the Manager of a Bank, that defalcation in question relates to a period when the petitioner had not even joined in her service and as soon as the learned about such irregularities, she had tendered her resignation which was not accepted by the authorities of the Bank. He has further submitted that the defalcation has been committed by other persons who have tried to pass it on to

the head of the petitioner and that investigation of the case is already over and charge sheet having been submitted in the case further detention of the petitioner will not serve any purpose, since there is no chance of her absconding or tampering with the evidence. Learned Addl. Standing Counsel appearing for the State has vehemently resisted the prayer for bail.

7. In a case involving bailable offences the accused is entitled to bail as a matter of right. In a case involving non-bailable offences, bail is to be granted at the discretion of the Court. However, such discretion is not arbitrary and is to be exercised on well established considerations which cannot be catalogued exhaustively. Some considerations which should weigh with the Court while judging whether a person accused of a non-bailable offence should be granted bail or not are nature and gravity of the offence, the chance of the accused fleeing from justice if granted bail, the chance of his tampering with the prosecution evidence, the actual role played by the accused in commission of the offence, the impact on the society at large etc.

The case diary reveals that most of the financial irregularities relate to a period when the petitioner was not in employment and therefore, she cannot be saddled with any responsibility. Her bona fide is apparent from the fact that she had tendered resignation alleging financial irregularities which was not accepted. This fact is not disputed by the prosecution. Investigation of the case is already over and therefore, there is virtually no chance of tampering with the evidence. The petitioner is a woman and a high placed officer. She has home and hearth and is settled. So there is virtually no chance of her absconding.

8. Having regard to the totality of the circumstances, I feel inclined to grant bail to the petitioner. Let the petitioner be released on bail of Rs. 20,000/- (twenty thousand) with two solvent sureties for the like amount to the satisfaction of learned S.D.J.M., Bhadrak in the aforesaid case.

The BLAPL is disposed of accordingly.