

Niranjan Sahoo Vs. State of Orissa

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Court : Orissa

Decided On : Jan-19-2010

Reported in : 2010(I)OLR653

Judge : B.K. Nayak, J.

Appellant : Niranjan Sahoo

Respondent : State of Orissa

Disposition : Application dismissed

Judgement :

ORDER

B.K. Nayak, J.

1. This the second journey of the petitioner to this Court seeking anticipatory bail under Section 438, Cr.P.C. in connection with Nayagarh Sadar P.S. Case No. 32 of 2009 corresponding to G.R. Case No. 393 of 2009 pending on the file of learned S.D.J.M., Nayagarh for alleged commission of offences under Sections 341/294/323/324/ 325/307/379/34 of the Indian Penal Code.

2. Earlier the petitioner and Anr. co-accused, namely, Sanjaya Sahoo filed application in this Court for anticipatory bail in BLAPL No. 12849 of 2009 in connection with the very same Nayagarh Sadar P.S. Case No. 32 of 2009. In the

said bail application, the present petitioner figures as petitioner No. 1. Upon hearing, a co-ordinate Bench of this Court passed order in that bail application on 28.08.2009 granting anticipatory bail to co-accused-Sanjaya Sahoo, but rejected the prayer for anticipatory bail of the present petitioner. The relevant portion of the said order in so far as it relates to the present petitioner is quoted hereunder:

So far as petitioner No. 1 -Niranjan Sahoo is concerned, considering the gravity of the offence alleged to have been committed by him, I am not inclined to grant him anticipatory bail and reject the prayer.

However, I grant liberty to petitioner No. 1 to surrender before the court below and move for regular bail, in which event the said court will dispose of the bail application of the petitioner on the same day it is filed. If thereafter the petitioner filed bail petition before the Sessions court on being called for the records shall be transmitted to that court at the cost of the petitioner and the latter will do well to dispose of the bail petition expeditiously.

3. In view of the rejection of the earlier anticipatory bail application of this petitioner, as above, the learned Additional Government Advocate raised objection about the maintainability of this second anticipatory bail application. Learned Counsellor the petitioner, on the other hand, contended, relying upon the decision of this Court in the case of Bimal Lochan Das v. State of Orissa (2007) 37 OCR 688 that the principle of res judicata is not applicable to bail application and, therefore, there is no bar for filing successive anticipatory bail applications.

4. In the case of Bimal Lochan Das (supra), this court allowed the second anticipatory bail application holding that the earlier bail application, the anticipatory bail had been granted only for two months and that in the meantime, there was a change of circumstance and, therefore, the second application was maintainable. Repelling the contention of the State Counsel in that case this Court observed as follows: The decision in the case of State of T.N. (supra) on which, Mr. D.K. Mohapatra, places reliance, was a case concerning repeated filing of bail applications under Section 439 Cr.P.C. without any change of circumstances. This Court is of the considered view that the ratio of the said decision cannot be made applicable to a second petition filed under Section 438 Cr.P.C. As a matter of fact,

in the said decision, even in the case of application under Section 439 Cr.P.C, the Supreme Court observed that the principle of res judicata are not applicable to bail applications but repeated filing of bail applications without any change of circumstance could lead to a bad precedent.

From the fact of the present case, it is revealed that the petitioner approached this Court previously in an application under Section 438, Cr.P.C. and, as stated earlier, this Court favoured the petitioner with an order under the said Section, but for a period of two months from the date of passing of the said order. There is a change circumstance as found from the records that now the Vigilance has sought for sanction for lodging the prosecution. It can, therefore, be safely held that the Investigating Agency having sought for sanction to lodge the prosecution, the same definitely creates sufficient apprehension in the mind of the petitioner, of his arrest. More so, when the period for which the order of anticipatory bail was previously granted has passed long since. This Court is therefore of the view that the present petition is maintainable.

5. In the present case, there is neither any change of circumstance nor is it of the nature where the petitioner had been granted anticipatory bail for a brief period and there was a subsequent change of circumstance. On the other hand, it is a case whereupon consideration of the materials on record and hearing the submissions of the counsel for parties, this Court consciously rejected the prayer for anticipatory bail of the petitioner and granted liberty to the petitioner to surrender before the court below and to move for regular bail with a direction to the court below to dispose of the same on the same day, and in the event the occasion arose to move the sessions court against rejection by the lower court, the said application was to be disposed of expeditiously. Instead of complying with the subsequent direction of this Court, the petitioner has filed this fresh anticipatory bail application, averments where of are verbatim reproduction of the averments made in the earlier bail application. There is nothing on record nor any argument has been advanced on behalf of the petitioner to show that there has been any substantial change of circumstances after rejection of the earlier anticipatory bail application, which would necessitate reconsideration of the prayer afresh.

6. If appreciated in the perspective of the claim, I am of the view that the Court should be too slow to thrive the second application of a party for anticipatory bail where the earlier one has been rejected on merits and there is no substantial change of circumstance or events. Further repetition of prayer for anticipatory bail after rejection by a Bench of coordinate jurisdiction after invoking the power of review of the decision of the earlier Bench may lead to a judicial anarchy about which caution has been sounded by the apex Court in the case of *Mahadolal Kanodia v. Administrator General* AIR 1960 S.C. 936:

Judicial decorum no less than legal propriety forms the basis of judicial procedure' and 'if one thing is more necessary in law than any other thing it is the quality or certainty' and that 'that quality would totally disappear if judges of coordinate jurisdiction in the High Court start overruling one another's decisions'. It was observed further that the result would be utter confusion if a 'Judge sitting singly in the High Court is of opinion that the previous decisions of another single judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger bench' as 'in such a case lawyers would not know how to advise their clients and all courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgment of their own High Court'. For the foregoing reasons, it is held that this second application for anticipatory bail is not maintainable and accordingly it stands rejected.

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