

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CRA No. 206 of 2000**

***Prafulla Dehury***

....

***Appellant***

***-versus-***

***State of Odisha***

....

***Respondent***  
Mr. S.N.Das, ASC

**CORAM:  
THE CHIEF JUSTICE  
JUSTICE R.K.PATTANAIK**

**ORDER**  
**10.03.2022**

**Order No.**

12. 1. On 10<sup>th</sup> August, 2020 the appeal was taken up for hearing, none appeared for the Appellant. The following order was passed:

“None appears for the appellant when the matter was called.

Learned Additional Government Advocate is hereby directed to take instruction regarding well being the Appellant-Prafulla Dehury as it appears from the record that the bail application of the appellant was rejected on 04.08.2005.”

2. On the following date i.e. 21<sup>st</sup> August, 2020 again none appeared, again time was granted to the Additional Government Advocate to obtain instructions from the concerned jail or the police station.

3. It appeared that the Appellant had violated the condition of his parole and he had absconded after being released on parole. This was noted by the Court in its order dated 28<sup>th</sup> August, 2020.

4. On 24<sup>th</sup> September, 2020 the following order was passed:

“None appears on behalf of the Appellant.

Mr. Mruganka Sekhar Sahoo, learned Addl. Govt. Advocate for the State submits that the sole appellant was granted parole for fourteen days and as per the report of the IIC, Talcher Police Station, he violated the same and did not surrender before the authority after the end of the period.

Learned Addl. Govt. Advocate for the State is directed to examine this aspect and apprise the Court about the action this Court should take in such situation.”

The same situation continued on 5<sup>th</sup> October, 2020.

5. The question then arose before the Court whether in the absence of the accused the Appellate Court could dispose of the appeal for non-prosecution. Reliance was placed on the decision of the Supreme Court in ***Bani Singh v. State of Uttar Pradesh AIR 1996 SC 2439***, to hold that the Appellate Court was expected to dispose of the appeal on merits.

6. Today again none appears for the Appellant. He continues to remain absconding. Even if for the purpose of hearing the appeal on merits the Court appoints an Amicus Curiae to argue the case on behalf of the Appellant, the problem does not get resolved. If the appeal is dismissed on merits, the Appellant whenever he desires to appear would still argue that it was decided in his absence and therefore has to be re-heard. If the appeal were to be allowed, it would be send a wrong message, that the appeal of a person who has jumped parole will be entertained by the Court notwithstanding his having violated the law. The Court is then left with a choice less situation of the appeal pending indefinitely and with no effort by the Appellant to have it heard at all because it does not suit him to appear and have the appeal heard.

7. The better course of action would be to direct the State to re-double its efforts to track down the Appellant and to have its appeal revived immediately upon the Appellant's arrest. That way the Appellant could not be denied the opportunity of pursuing of this appeal and arguing it on merits. At the same time the rule of law would be upheld with the Court first ensuring that the Appellant is back in custody for having violated the parole condition and that his appeal is not heard while he continues to violate the law.

8. Accordingly the appeal is disposed of for the time being an express direction to the State to re-double its efforts to track down the absconding accused and further that as soon as Appellant is

arrested an application will be moved by the State itself in this Court praying that the appeal be revived for hearing on merits.

***(Dr. S. Muralidhar)***  
***Chief Justice***

***(R.K. Pattanaik)***  
***Judge***

Tudu/Kabita

