

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.1433 of 2022

Itishree Pati & Anr.

....

Petitioners

Mr. Dharanidhar Nayak, Sr. Adv.

along with

Mr. Biswaranjan Swain, Adv.

-versus-

State of Odisha

....

Opposite Party

Mr. G.R.Mohapatra, ASC

CORAM:

DR. JUSTICE S.K. PANIGRAHI

Order

No.

8.

ORDER

13.09.2022

1. This matter is taken up through hybrid mode.
2. The Petitioners have been falsely implicated and are in custody in connection with Tihidi P.S Case No. 74 of 2020 corresponding to S.T Case No.52 of 2020 pending before the court of the Learned Sessions Judge, Bhadrak for commission of offences punishable u/s 302/201/34 of IPC.
3. The prosecution story, in brief, has been summarised in the following points:
 - i. On 05.03.2020, the complainant Sabita Sahu of village Icchapur, PS-Tihidi, Dist-Bhadrak lodged a FIR at the Tihidi Police Station alleging that her son Prasanna Kumar Sahu has been missing since 25.01.2020.

- ii. The Complainant suspected the involvement of the Petitioners behind her son's ("deceased") disappearance on the basis of some past disputes even though the same had been amicably settled between the parties.
- iii. Upon further investigation, it was found that the deceased was in an illicit relationship with Itishree Pati ("accused"). The husband of the accused i.e., Debendra Pati came to know about the same and asked the accused to accompany him to Kolkata. The accused was tortured by her husband for above-mentioned grounds and she intimated her difficulty to her brother Sukdeb Padhi who conspired with the petitioners to earth out a plan to murder the deceased.
- iv. On the evening of 24.01.2020, the accused ascertained the whereabouts of the deceased through her brother and also asked him to accompany the deceased to the house of Debendra Pati. Thereafter, they committed the murder of the deceased by strangulating him by means of a nylon/plastic rope and shifted the dead body of the deceased into a big empty sack. The sack containing the dead body was carried and disposed of at the Baisnab Gohiri Canal.

4. It is submitted by the learned counsel for the Petitioners that the Petitioners are no way connected to the present case and they have been falsely implicated in the alleged occurrence. It is contended that even though the name of the Petitioners was not included in the FIR, their names have been falsely implicated in the charge-sheet in absence of any material.
5. It is further contended by the learned counsel for the Petitioners that the Petitioners have no intention to tamper with the evidence nor do they have any capacity to do so. It is submitted that the Petitioners are the permanent residents in their locality and that negates any chance of absconding if they are granted bail.
6. *Per Contra*, Learned Counsel for the State submitted that the bail application is devoid of any merit as it is the subsequent application filed by the accused persons as the earlier bail application was rejected vide order dated 11.12.2020 and there is no change in circumstances for considering the bail application afresh.
7. The Supreme Court has, in a catena of judgments, outlined the considerations on the basis of which discretion under Section 439, Cr.P.C. has to be exercised while granting bail. In the case of *Gurcharan Singh v. State*

*(Delhi Administration)*¹, the Supreme Court has held as to the various parameters which must be considered while granting bail. This Court held as follows:

"24. ...Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1) CrPC of the new Code. The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1) CrPC of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the 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 valuable factors, cannot be exhaustively set out."

8. The above factors do not constitute an exhaustive list. The grant of bail requires the consideration of various factors which ultimately depends upon the specific facts and circumstances of the case before the Court. There is no strait jacket formula which can ever be prescribed as to what the relevant factors could be. However, certain important factors that are always considered, *inter-alia*,

¹(1978) 1 SCC 118

relate to prima facie involvement of the accused, nature and gravity of the charge, severity of the punishment, and the character, position and standing of the accused.

9. In the case of *Prahlad Singh Bhati vs. NCT of Delhi & Ors*², the Supreme Court highlighted the aspects which are to be considered by a court while dealing with an application seeking bail. The same may be extracted as follows:

“The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behavior, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge.”

² (2001) 4 SCC 280

10. The Supreme Court in the case of ***Brijmani Devi v. Pappu Kumar and Anr***³ discussed on the aspect of application of mind and requirement of judicious exercise of discretion in arriving at an order granting bail to the accused. The Court while setting aside an unreasoned and casual order of the High Court granting bail to the accused, observed as follows:

“While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail Courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly, when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record so as to enable a Court to arrive at a prima facie conclusion. While considering an application for grant of bail a prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis-à-vis the offence/s alleged against an accused.”

11. In the case of ***Prasanta Kumar Sarkar v. Ashis Chatterjee and Anr***⁴, Justice D.K. Jain, speaking for a two-Judge Bench of the Supreme Court laid down the principles for

³Criminal Appeal No. 1663/2021

⁴(2010) 14 SCC 496

examining the correctness of orders granting bail to an accused. The Court held:-

“9. ...It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- i. whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- ii. nature and gravity of the accusation;*
- iii. severity of the punishment in the event of conviction;*
- iv. danger of the accused absconding or fleeing, if released on bail;*
- v. character, behaviour, means, position and standing of the accused;*
- vi. likelihood of the offence being repeated;*
- vii. reasonable apprehension of the witnesses being influenced; and*
- viii. danger, of course, of justice being thwarted by grant of bail.*

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of nonapplication of mind, rendering it to be illegal.”

12. Further, in the case of *Basanta Panda v. State of Odisha*⁵, this court while highlighting the importance of change in circumstances as a parameter for grant of bail observed here asunder:

“The change of circumstances must be substantial one which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence. Without the change in the circumstances, the subsequent bail application would be deemed to be seeking review of the earlier rejection order which is not permissible under criminal law. While entertaining such subsequent bail applications, the Court has a duty to consider the reasons and grounds on which the earlier bail application was rejected and what are the fresh grounds which persuade it warranting the evaluation and consideration of the bail application afresh and to take a view different from the one taken in the earlier application. There must be change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. The present bail application being a successive one moved within two months of the rejection of the earlier bail application before the learned trial Court without any changed circumstances and after its rejection the petitioner has rushed to this Court again and hence the bail stands rejected.”

13. Adverting to the contentions raised by the learned counsel for the respective parties, it is the admitted position that

⁵BLAPL No. 8126 of 2020

there is no change in the circumstance after the rejection of the earlier bail application by this Court vide order dated 11.12.2020 in BLAPL No.9165 of 2020. The question that comes up for consideration is whether successive bail application can be entertained and a different view can be taken on the already existing materials when the earlier bail application was rejected on merit.

14. In the case of *Kalyan Chandra Sarkar v. Rajesh Ranjan*⁶, the Supreme Court held as follows:

"Before concluding, we must note though an accused has a right to make successive applications for grant of bail, the Court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the Court also has a duty to record what are the fresh grounds which persuade it to take a view different from the one taken in the earlier applications."

15. Thus, it is the settled position of law that successive bail applications are permissible under the changed circumstances. The change of circumstances must be substantial one which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence. Without the change in the circumstances, the subsequent bail application would be

⁶AIR 2004 SC 1866

deemed to be seeking review of the earlier rejection order which is not permissible under criminal law. While entertaining such subsequent bail applications, the Court has a duty to consider the reasons and grounds on which the earlier bail application was rejected and what are the fresh grounds which warrants the evaluation and consideration of the bail application afresh and to take a view different from the one taken in the earlier application. There must be change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which the application for bail of an accused that has been rejected earlier can be reconsidered. If a bail application is rejected considering some grounds urged by the counsel for the accused and on the same materials and without any change in the circumstances, the successive bail application is moved taking some other grounds and the Court is asked to reconsider the prayer of bail, it would be an endless exercise for the Court and entertaining such application would be a sheer wastage of valuable time of the Court.

16. In the case at hand, one of the accused Sukdev Padhi confessed after committing the murder of the deceased in presence of two local witnesses that the seized brown

coloured rope is the one through which the Petitioners strangled the deceased. These statements of the co-accused are relevant to prima-facie show the involvement of the petitioners in commission of the crime.

17. Moreover, detailed discussion of the evidence and elaborate documentation on the merits of the case is to be avoided while considering an application for bail. No party should have the impression that his case has been pre-judged. Existence of a prima facie case is only to be considered. Where the offence is of serious nature, the question of grant of bail has to be decided mainly keeping in view the nature and gravity of the accusation, character of the evidence, chance of absconding of the accused, chance of tampering with the evidence and also the larger interest of the public.

18. In view of the foregoing discussions, this bail application, being a successive one moved within one month of the rejection of the earlier bail application before the learned trial court without any changed circumstances and after its rejection, the petitioners have rushed to this Court again. Therefore, this Court is not inclined to release the Petitioners on bail and the application for bail stands rejected.

19. It is made clear that observations made in this order for rejecting the prayer for bail will not be treated as expression of any opinion on merits of the case and the learned trial court shall decide the case without being influenced by any such observations.

B.Jhankar



(Dr. S.K. Panigrahi)
Judge