

IN THE HIGH COURT OF ORISSA, CUTTACK

I.A. No.1623 of 2022

**(Arising out of CRLA No.548 of 2022
disposed of on 05.09.2022)**

Sudhansu Sethi Appellant

-Versus-

1. State of Odisha
2. Manas Kumar Jena Respondents

For Appellant: - Mr. Ashok Jena
Advocate

For Respondent no.1: - Mr. Arupananda Das
Addl. Govt. Advocate

For Respondent no.2: - Mr. Soura Ch. Mohapatra
Advocate

P R E S E N T :

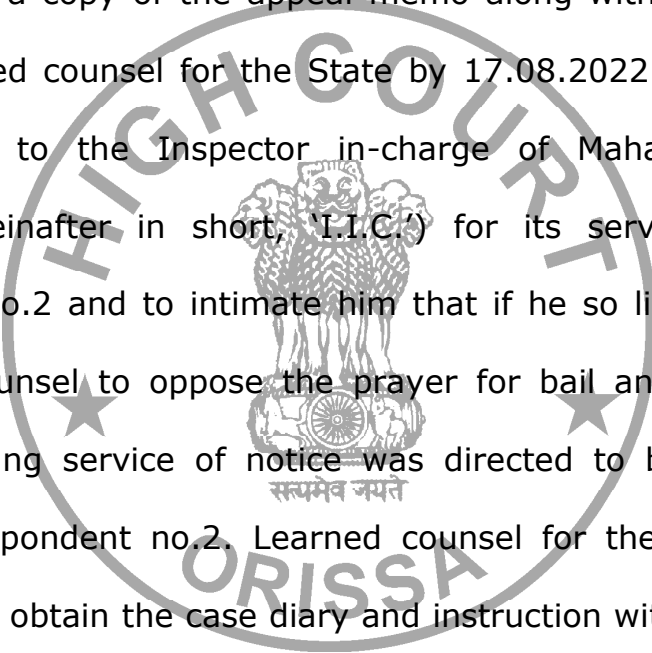
THE HON'BLE MR. JUSTICE S.K. SAHOO

Date of Hearing: 13.12.2022 Date of Order: 15.12.2022

S.K. SAHOO, J. This interim application has been filed by respondent no.2 Manas Kumar Jena, who is the informant in Mahanga P.S. Case No. 236 of 2018 corresponding to C.T. Case No. 158 of 2018 pending in the Court of learned Presiding Officer, Special Court under S.C. & S.T. (PoA) Act, Cuttack for recalling the order dated 05.09.2022 passed in CRLA No. 548 of 2022 in which this

Court has been pleased to direct release of the appellant Sudhansu Sethi on bail.

2. CRLA No. 548 of 2022 filed by the appellant was taken up for the first time on 16.08.2022 for orders and taking into account the fact that one of the offences alleged is under section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereafter in short, '1989 Act'), this Court directed the learned counsel for the appellant to serve an extra copy of the appeal memo along with enclosures on the learned counsel for the State by 17.08.2022 for onward transmission to the Inspector in-charge of Mahanga police station (hereinafter in short, 'I.I.C.')



for its service on the respondent no.2 and to intimate him that if he so likes, he can engage a counsel to oppose the prayer for bail and a written proof regarding service of notice was directed to be obtained from the respondent no.2. Learned counsel for the State was also asked to obtain the case diary and instruction with regard to the criminal antecedents, if any, against the appellant. The matter was then taken up 05.09.2022 and the learned counsel for the State submitted that notice on the informant was sent to the I.I.C., who reported that neither the informant (respondent no.2) nor any of his family members was present in village Nrutanga as per the address given in the F.I.R. Then this Court

after hearing the learned counsel for the appellant so also the learned counsel for the State and taking into account the nature of accusation against the appellant, absence of any overt act against him and his period of detention in judicial custody so also release of the co-accused on bail, directed the appellant to be released on bail with certain terms and conditions.

3. In the interim application, it has been urged, inter alia, that the report that has been furnished by the I.I.C. that the respondent no.2 and his family members were not available in the village Nrutanga is wrong and the respondent no.2 is residing in Bhubaneswar and he is a Government servant working as Section Officer in the office of the Director of Secondary Education, Bhubaneswar and he used to visit his village on holidays and also on alternate Saturdays and Sundays.

On such submission being made on 02.11.2022 by the learned counsel for the respondent no.2, the I.I.C. of Mahanga police station was directed to file an affidavit on the interim application and he was also directed to remain present in person on the next date. The matter was taken up on 06.12.2022 and on that date, an affidavit was filed by the I.I.C. wherein it is mentioned, inter alia, that he received the copy of the order dated 16.08.2022 as per the letter dated 17.08.2022 of the office of the learned Advocate General on 21.08.2022 and

after receiving the same, he visited the village Nrutanga to serve the notice on the respondent no.2, but found him absent and the house was also locked and on local enquiry, he ascertained that the respondent no.2 is not residing in village Nrutanga and accordingly, compliance report was submitted to the office of the learned Advocate General. It is further stated in the affidavit that immediate steps have been taken to serve the notice on the respondent no.2 as per the address furnished in the cause title of the CRLA, which is also the address given in the F.I.R., but it could not be done due to the absence of the respondent no.2. The other allegations which have been made in the interim application have been denied by the I.I.C. in his affidavit. Copy of the affidavit filed by the I.I.C. was served on the learned counsel for the respondent no.2, who took time to file objection to such affidavit. Accordingly, the case was posted to 13.12.2022 and the I.I.C. was directed to remain present on that date.

The respondent no.2 has filed his objection to the affidavit filed by the I.I.C. wherein it is stated that the respondent no.2 is serving in the State Secretariat, Bhubaneswar and staying at Bhubaneswar. It is further stated that the I.I.C. has filed an affidavit in the connected CRLA No. 338 of 2021 which was filed by co-accused Manas Ranjan Pani for bail in which after grant of bail, interim application was filed for recall of

the bail order and in that affidavit, the I.I.C. has mentioned that during his attempt to serve the notice on the informant, from the local enquiry, it came to his knowledge that the respondent no.2 is residing at Bhubaneswar and therefore, steps could have been taken to serve the notice on the respondent no.2 in his Bhubaneswar address. It is further submitted that since no sincere attempt has been made by the I.I.C. to serve the notice on the respondent no.2 and sub-section (3) and (5) of 15-A of 1989 Act confers a valuable right on the victim or his dependent to a reasonable, accurate and timely notice of any Court proceeding including bail proceeding and also right of hearing during such proceeding and the same has been flouted in the case, the order dated 05.09.2022 needs to be recalled and the matter is to be heard afresh.

4. Mr. Soura Ch. Mohapatra, learned counsel appearing for the respondent no.2 emphatically contended that there are ample evidence on record against the petitioner relating to his involvement in the ghastly crime and the statements of eye witnesses get corroboration from the medical evidence and the prayer for bail of co-accused persons has been rejected and all the materials could have been placed to oppose the prayer for bail, but on the basis of a false report submitted by the I.I.C., the informant could not get a chance to oppose the prayer for

bail for which the bail order should be recalled. He highlighted that the facts of the case, the nature of allegations, gravity of offences and role attributed against the appellant have not been properly placed by the learned counsel for the State. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of **Hariram Bhambhi -Vrs.- Satyanarayan and another reported in A.I.R 2021 Supreme Court 5610.**

5. Mr. Arupananda Das, learned Additional Government Advocate on the other hand submitted that there was no negligence on the part of the I.I.C. in making attempts to serve the notice on the respondent no.2 as per the order of this Court dated 16.08.2022 and in that respect, he placed the station diary/general diary entries dated 21.08.2022, 22.08.2022 and 24.08.2022 of Mahanga police station from which it reveals that on 21.08.2022, the I.I.C. received the order of this Court through the letter issued from the office of the learned Advocate General and on 22.08.2022 so also on 24.08.2022, attempts were made by the I.I.C. to visit the village Nrutanga to serve the appeal notice on the respondent no.2, but it was found that his house was locked from outside and after due enquiry in the locality, it came to light that neither the respondent no.2 nor any of his family members was residing in his native village at Nrutanga. He objected to the submission made by the learned

counsel for the respondent no.2 that there was laches from the side of the State to oppose the application for bail.

6. The report which was furnished by the I.I.C. dated 26.08.2022 to the office of the learned Advocate General indicates that he along with his other police staff had been to village Nrutanga to serve the notice on the respondent no.2, but unfortunately it could not be served as neither the respondent no.2 nor any of his family members was residing at village Nrutanga and from the local confidential enquiry, it was also ascertained that the informant is not residing in his native village.

7. In the case of **Hariram Bhambhi**(supra), it has been held as follows :

"13. Section 15A of the SC/ST Act contains important provisions that safeguard the rights of the victims of caste-based atrocities and witnesses. Sub-sections (3) and (5) of Section 15A specifically make the victim or their dependent an active stakeholder in the criminal proceedings. These provisions enable a member of the marginalized caste to effectively pursue a case and counteract the effects of defective investigations...

14. Sub-section (3) of Section 15A confers a statutory right on the victim or their dependents to reasonable, accurate, and timely notice of any

court proceeding including a bail proceeding. In addition, sub-section (3) requires a Special Public Prosecutor or the State Government to inform the victim about any proceeding under the Act. Sub-section (3) confers a right to a prior notice, this being evident from the use of the expression "reasonable, accurate, and timely notice of any court proceeding including any bail proceeding". Sub-section (5) provides for a right to be heard to the victim or to a dependent.

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The provisions of sub-section (3) which stipulate the requirement of notice and of sub-section (5) which confers a right to be heard must be construed harmoniously. The requirement of issuing a notice facilitates the right to be heard.

xx xx xx xx xx

17. The finding of the Gujarat High Court that the requirement of issuing notice of a court proceeding to a victim or a dependent Under Section 15A(3), in order to provide them an opportunity of being heard, is mandatory, finds echo in multiple High Court decisions including a decision of the Rajasthan High Court. We find ourselves in agreement with the proposition and hold that sub-sections (3) and (5) of Section 15A are mandatory in nature.

xx xx xx xx xx

20. Atrocities against members of the Scheduled Castes and Scheduled Tribes are not a thing of

the past. They continue to be a reality in our society even today. Hence the statutory provisions which have been enacted by Parliament as a measure of protecting the constitutional rights of persons belonging to the Scheduled Castes and Scheduled Tribes must be complied with and enforced conscientiously....

21. We also emphasize that sub-section (3) of Section 15A provides that a reasonable and timely notice must be issued to the victim or their dependent. This would entail that the notice is served upon victims or their dependents at the first or earliest possible instance. If undue delay is caused in the issuance of notice, the victim, or as the case may be, their dependents, would remain uninformed of the progress made in the case and it would prejudice their rights to effectively oppose the defence of the Accused. It would also ultimately delay the bail proceedings or the trial, affecting the rights of the Accused as well."

In the aforesaid case, no notice was issued to the informant under the provisions of section 15A of the 1989 Act and bail was granted to the accused, which was set aside by the Hon'ble Supreme Court.

8. In the case in hand, it does not fall within the factual category as in the case of **Hariram Bhambhi** (supra) inasmuch as not only on 16.08.2022 there was a direction to serve the

copy of the appeal memo along with enclosures on the respondent no.2 but also to apprise him about the date when the CRLA would be taken up and to intimate him if he so likes, he can engage a counsel to oppose the prayer for bail. The materials produced before this Court, particularly, the station diary/general diary entry, which reveals that on two dates i.e. on 22.08.2022 and 24.08.2022, the I.I.C. along with other police staff had been to village Nrutanga, which is the village of the respondent no.2 for serving notice on him, but the house was locked and nobody was residing in the native village of the respondent no.2 and from the local enquiry, it was also ascertained that neither the respondent no.2 nor his family members was residing in village Nrutanga. Therefore, intimation which has been provided by I.I.C. on 26.08.2022 to the office of the learned Advocate General is found to be correct and the contents of such intimation are getting corroboration from the station diary/general diary entries.

In that view of the matter, the submission of the learned counsel for the respondent no.2 that a false report has been submitted by the I.I.C. regarding the absence of respondent no.2 and his family members in village Nrutanga cannot be accepted. When the informant has not given his present address in the F.I.R. nor communicated the same to the

I.O./I.I.C. of Mahanga police station and nobody could able to give his exact address though from the local enquiry, it came to the knowledge of the I.I.C. that the respondent no.2 was residing at Bhubaneswar, I do not find any flaw in the report submitted by the I.I.C. to the office of the learned Advocate General on 26.08.2022.

9. There is no dispute that in terms of sub-section (3) and (5) of section 15-A(1) of the 1989 Act, the victim or his dependent has a right to reasonable, accurate and timely notice of any Court proceeding including any bail proceeding pending in any Court and also a right to oppose the application for bail if he so likes, but the bail application of an accused who is in jail custody cannot be kept pending for a long period in spite of sincere attempt being made to serve the notice on the victim or his dependent in the known address. A duty is cast on the informant/victim also to communicate to the I.O./I.I.C. of the concerned police station his present address, in case he changes his address or resides at another place for his avocation or for some other reason other than the address furnished in the F.I.R. It is also the duty of the prosecuting agency to collect the contact number/e-mail/whatsApp number of the victim or his dependent, if available to make communication with them in case the situation so demands either for service of notice in a

bail application filed by the accused or for service of summons during trial. If the prosecuting agency deliberately submits a false report regarding absence of the victim or his dependent in the address given in the F.I.R. or makes no sincere attempt for service of the notice/summons of the proceeding at different stages, then a valuable right, which has been conferred under the statute to the victim or his dependent would be frustrated. Strict action can be taken against the erring officials, who fail to comply the provisions under sub-section (3) of section 15-A of the 1989 Act and submit a false report. While submitting the report to the Court regarding non-availability of the victim or his dependent in the known address, necessary documents/proof substantiating the attempts made for service of the notice are also to be placed before the Court, so that the Court would be in a position to proceed further to adjudicate the bail application of an accused to prevent further delay.

10. During the course of hearing of the interim application, learned counsel for the State on query being made by this Court, on verification of the case records submitted that there is no criminal antecedent against the appellant. He further submitted that there is no material on record that after being enlarged on bail by this Court as per order dated 05.09.2022, there was any misutilization of the liberty by the appellant.

Learned counsel for the appellant submitted that in the meantime, in the learned trial Court out of forty charge sheet witnesses, nine witnesses have been examined including the informant as P.W.4 and two injured eye witnesses, namely, Paresh Kumar Jena as P.W.2 and Chandramani Jena as P.W.3 and they have stated in an omnibus manner against the appellant. He further submitted that at this stage, when there is no chance of tampering with the evidence and the appellant after being released on bail has not misutilised his liberty, the bail order should not be recalled.

11. Considering the submissions made by the learned counsel for the respondent no.2, learned counsel for the State as well as the learned counsel for the appellant and after going through the affidavits filed by the I.I.C. along with the documents so also the objection filed by the respondent no.2, I am not inclined to recall the order dated 05.09.2022.

Accordingly, the I.A. stands dismissed.

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S.K. Sahoo, J.

Orissa High Court, Cuttack
The 15th December 2022/PKSahoo