

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.723 of 2022

Shyama Sahu

....

Appellant

Mr. Satyabrata Panda, Advocate

-versus-

State of Odisha and another

....

Respondents

Mr. P.C. Das, ASC

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

22.12.2022

Order No.

08.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. This an appeal under Section 14-A(2) of the S.C. & S.T. (PoA) Act, 1989.
3. The present Criminal Appeal is directed against the order dated 16.08.2022 passed by the learned Additional Sessions Judge, Padampur in Spl. G.R. No.66 of 2021 wherein the prayer for bail of the Appellant has been rejected, which arises out of Gaisilat P.S. Case No.148 of 2021 for alleged commission of offences under Sections 147/452/294/435/436/395/149 of the I.P.C. read with Sections 3(1)(r)(s)/3(2)(v)(va) of the S.C. & S.T. (PoA) Act.
4. Heard Mr. Satyabrata Panda, learned counsel appearing for the Appellant as well as Mr. P.C. Das, learned Additional Standing Counsel appearing for the State-Respondent No.1. Pursuant to the notice, the Respondent No.2-Informant appeared before this Court through virtual mode from the local police station and made her submission before this Court. Perused the Case Diary, statement of

witnesses and other relevant documents placed before this Court for consideration.

5. The prosecution story as narrated in the F.I.R., in nutshell, is that on 11.08.2021 in the evening at about 6.00 P.M. while the husband of the Informant was not home, the Appellant along with others forcibly entered inside her house and abused her husband and her family members in filthy languages and also threatened to kill them. Thereafter, the Appellant started damaging the household articles and the house was set on fire, as a result of which, their clothes, documents and motorcycle were destroyed and further the Appellant and other accused persons had taken away the cash of Rs.1,00,000/- and gold ornaments kept in the house. Accordingly, the F.I.R. was registered and the investigation started.

6. It is submitted by the learned counsel for the Appellant that the Appellant is in custody since the date of his arrest, i.e, on 29.08.2021. It is further submitted that the investigation has been concluded and charge sheet has been filed. It is further submitted that another F.I.R. pertaining to the same incident was also lodged by the elder sister-in-law of the present Informant, namely, Surya Kumbhar, which was registered as Gaisilat P.S. No.147 of 2021, corresponding to Spl. G.R. Case No.65 of 2021 for the alleged commission of offences under Sections 147/ 148/ 149/ 506/ 294/ 427/ 452/ 436/ 307/ 395/376(D) of the I.P.C. read with Section 3(1)(r)(s)/3(2)(v)(va) of the S.C. & S.T. (PoA) Act.

7. Mr. Panda, learned counsel appearing for the Appellant further contended that two F.I.Rs. have been lodged by one family. The first one bearing Gaisilat P.S. Case No.147 of 2021 was registered at the instance of the wife of brother-in-law of the Informant in Gaisilat

P.S. Case No.148 of 2021, namely, Surya Kumbhar and another F.I.R. bearing Gaisilat P.S. Case No.148 of 2021 was registered at the instance of the Informant in the present case (Smt. Janata Kumbhar). Both the F.I.Rs. were lodged on the same day at about 6.00 P.M. arising out of the same occurrence at same place and involving the self-same persons. It is further contended by Mr. Panda that earlier the Appellant had approached this Court by filing CRLA No.81 of 2022 for his release on bail. This Court vide order dated 19.04.2022 disposed of the said application granting liberty to the present Appellant to renew his prayer for bail after examination of the victim by the trial court and the co-accused person, namely Premananda Sahu was allowed to be released on bail by this Court.

8. Learned counsel for the Appellant further contended that the present case is counterblast to Gaisilat P.S. Case No.116 of 2021 which was registered under Section 363 of I.P.C. The aforesaid case was registered on the allegation of that the daughter of one Thuri Sahu, namely, Nandini Sahu has been abducted by the Informant's son, namely, Prashanta Kumbhar. Since the inter caste marriage in the locality is not acceptable, the Appellant along with other co-villager went to the house of the Informant to enquire about the whereabouts of Nandini Sahu. Accordingly, the Informant to save herself and her family and his son has lodged this false F.I.R. making false allegation against the co-villagers.

9. Mr. Panda also argued that on investigation, the police did not find any burnt house except a melted plastic bottle and some half burnt clothes and ashes. He further contended that the allegation with regard to theft of money and gold jewellery are false and baseless. Therefore, it is contended that no case under Sections 436 and 395 of

I.P.C. is made out against the present Appellant.

10. It is further contended by Mr. Panda that the present Appellant is a resident of locality and having his own house. Therefore, there is no chance of absconding and further in the event of release on bail, the Appellant shall abide by any terms and conditions that would be imposed by this Court.

11. Learned Additional Standing Counsel appearing for the State-Respondent No.1, on the other hand, submits that the allegations made against the Appellant are very serious. He further submitted that group of villagers entered into the house of the Informant and threatened them and abused them in filthy language by calling their caste name. He further submitted that since the trial is going on and material witnesses are yet to be examined, the release of the Appellant at this juncture may not be in the interest of justice and the same would seriously prejudice the trial in this case.

12. The Informant-Respondent No.2, who appeared through virtual mode from the local police station also objected to the bail application of the Appellant and pleaded before this Court not to release the Appellant on bail. She further expressed apprehension that in the event the Appellant in release on bail, there is possibility the Appellant might threatened, caused harm to her and her family members. As such, the Informant prayed before this Court that the bail application of the Appellant be rejected at this juncture.

13. In reply to the submission made by the Informant and the learned counsel for the State, learned counsel for the Appellant submitted that there are no direct materials available against the present Appellant. He further contended that co-accused persons, who stand on similar footing with the present Appellant, have already

been released on bail by this Court. He further submits that the Appellant is languishing in jail custody for more than one year. He further submits that the Appellant shall abide by any terms and conditions as would imposed by this Court in the event the Appellant is released on bail.

14. Having heard learned counsel for the parties and upon a careful consideration of the rival contentions and upon a careful conspectus of the factual background of the present case and upon a careful scrutiny of the case diary, statements of the witnesses and relevant materials and also taking into consideration the fact that the Appellant is in custody for more than one year and the trial is not likely to be concluded in the near future, this Court thinks it proper and in the interest of justice that the Appellant be enlarged on bail with conditions.

15. Hence, it is directed that the Appellant be released on bail in the aforesaid case on furnishing bail bond of Rs.30,000/-(Rupees thirty thousand) with two local solvent sureties each for the like amount to the satisfaction of the Court in seisin over the matter.

16. The release of the Appellant shall also be subject to such other conditions as would be deemed fit and proper by the Court in seisin over the matter.

17. While imposing conditions, the Court in seisin over the matter shall also impose the conditions whereby the Appellant while on bail shall not threaten, harass or terrorize the Informant and her family members in any manner whatsoever and shall appear before the trial court on each date fixed for trial, failing which it is open for the Court in seisin over the matter to treat this order as revoked and proceed against the Appellant by issuing N.B.W. and take him to

custody for violation of the aforesaid terms and conditions.

18. With the aforesaid observation and direction, this Criminal Appeal is allowed subject to the terms and conditions mentioned hereinabove.

(A.K. Mohapatra)
Judge

Debasis

