

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMA No.296 of 2022

Ashish Padhy

....

Petitioner

Mr. Debasis Sarangi, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. Karunakar Gaya, ASC

CORAM: JUSTICE V. NARASINGH

ORDER

01.11.2022

Order No.

01.

1. This matter is taken up through hybrid mode.
2. CRLMA under Section 439(1)(b) has been filed by the Petitioner assailing the order of the learned Sessions Judge, Ganjam, Berhampur I/c. dated 22.10.2022 in B.A No.1074 of 2022 rejecting permission sought by the Petitioner to leave the territorial jurisdiction of the trial court to Australia along with his mother on account of illness of his brother.
3. Heard learned counsel for the Petitioner and learned counsel for the State.
4. The Petitioner is an accused in Berhampur Cyber Crime and Economic Offences P.S Case No.4 dated 15.05.2022 corresponding to G.R. Case No.1001 of 2022 on the file of learned S.D.J.M., Berhampur for commission of the alleged offence under Sections 292(2)(a)/354-A/465/469/509 IPC and Sections 66(C)/ 66(D)/ 67/ 67(A) of the I.T Act. The learned Sessions Judge,

Ganjam, Berhampur directed the release of the present Petitioner-accused by order dated 07.09.2022 in B.A No.864 of 2022.

5. While so releasing, learned Sessions Judge, Ganjam, Berhampur I/c, inter alia, imposed following two conditions, which are germane for the just adjudication. The same are extracted below;

“xxx xxx xxx

(iv) He shall appear before the I.O/I.I.C once every ten days i.e. on 1st, 10th, 20th & 30th of each month till submission of charge sheet, and

(v) He shall not leave the jurisdiction of the trial Court without prior permission.

xxx xxx xxx”

6. It is stated by the learned counsel for the Petitioner, Sri Sarangi that the Petitioner oblivious of his implication in the case at hand had booked two air tickets for himself and his mother to go to Australia on account of health condition of his brother-Prabhasis Padhy as per visa granted by the Australian Government. On perusal of the air tickets dated 01.07.2022, which are on record, it is seen that the Petitioner and his mother are scheduled to leave Delhi to Sydney (Aus) via Singapore on 07.11.2022 and return tickets have been booked for 18.01.2023.

7. It is submitted by the learned counsel for the Petitioner that keeping in view the nature of allegation and as the Petitioner's brother requires urgent medical treatment and as his mother cannot travel alone, he was forced to seek variance of the conditions, as adverted to above. But the learned 1st Addl. Sessions Judge, Berhampur failing to appreciate urgent need of the Petitioner and his mother by impugned order dated 22.10.2022 at Annexure-3

rejected his application for modification of the conditions stipulated and assailing the same, the present application has been filed.

8. On perusal of the impugned order, it can be seen that the learned Court in seisin over the matter had adverted to the judgment of the apex Court in the case of **Menaka Gandhi vrs. Union of India** reported in **AIR 1978 SC 597** and other cases but taking into account the factual matrix of the case at hand and as the Petitioner has criminal antecedent did not entertain the application for modification of the conditions and allow the Petitioner to travel beyond the jurisdiction of the court in seisin over the matter.

9. Learned counsel for the State on the basis of the materials on record supports the order passed by the learned Court in seisin over the matter inasmuch as it is stated that as the Petitioner has criminal antecedent and while granting him bail in BLAPL No.4896 of 2017 relating to CID CB Cyber Crime P.S. Case No.08 and 09 of 2017, this Court had specifically directed that he shall not indulge himself in similar offence and as the Petitioner has again involved himself in the case at hand, his prayer for modification and to allow him to travel beyond the jurisdiction of the court in seisin over the matter ought not to be considered.

10. It is the further submission of the learned counsel for the State that since the visa is of three years from 24th March, 2022 to 24th March, 2025 prima facie it shows that the Petitioner does not intend to submit to the jurisdiction of the learned Court in seisin over the matter. And, if he is allowed to go to Australia, the ongoing investigation would be jeopardized. It is further submitted that as the assessment of the learned Court in seisin over the matter does not suffer from any infirmity the case at hand does not merit consideration.

11. This Court perused the order passed by the learned Sessions Judge, Ganjam, Berhampur dated 07.09.2022 in B.A. No.864 of 2022 at Annexure-1 series while enlarging the Petitioner on bail.

12. On a perusal of the same, it comes to the fore that the Investigating Agency could not place on record any material to connect the Petitioner with the alleged crime.

13. The relevant observations by the learned Sessions Judge, Ganjam, Berhampur is extracted hereinunder for convenience of ready reference :

“xxx xxx xxx

The accused/petitioner had used a Hero Honda CBZ Extreme motorcycle bearing registration No.OR-07S-9086 belonging to his brother Prabhasis Padhy. The entire record does not contain a single document of the vehicle which was the first clue got by the officer of cyber crime to reach a conclusion that it was Asish Padhy who had used his brother's motorcycle to go to the internet café regularly for impersonating the informant thereby attracting provisions of I.T Act. The I.O has not provided the 161 Cr.P.C. statement of the owner of Mitu internet café who might have known the accused/petitioner since he was a regular visitor. Facebook profile of Asish Padhy along with some chats which not having any obscene content are not sufficient prima facie to hold the accused accountable at this stage of the case.

I am to add here that the FIR reveals that the accused/petitioner was making vulgar comments about her personal life and posting obscene photos to her husband through the messenger. However not a single obscene photos/messages from the Facebook messenger of the informant's husband has been collected by the I.O.”

(Emphasized)

14. Apart from that learned Court in seisin over the matter had also noted the violation of the mandate of the apex Court in the case

of **Arnesh Kumar vrs. State of Bihar and another** reported in **(2014) 58 OCR (SC) 999**.

15. On a conspectus of materials on record and taking into account the allegation qua the Petitioner, as noted above, and considering that the Petitioner has placed on record the air tickets of to and fro journey, which indicates that the Petitioner and his mother will return to India on 18th January, 2023, this Court is persuaded to modify the condition nos.(iv) and (v), as stated in the order dated 07.09.2022 passed by the learned Sessions Judge, Ganjam, Berhampur in B.A No.864 of 2022 at Annexure-1 series and culled out above.

16. Accordingly, the condition nos. (iv) and (v) as imposed in the order dated 07.09.2022 in B.A. No.864 of 2022 at Annexure-1 series stand modified.

17. The impugned order dated 22.10.2022 at Annexure-3 rejecting the prayer of the Petitioner to travel to Australia is set aside and the Petitioner is permitted to travel as per the air tickets enclosed and is directed to return to India on the scheduled date 18.01.2023.

18. Liberty is granted to the Investigating Agency to take steps in accordance with law intimating the Indian Embassy, Australian Consulate and the Passport Authority of India to enforce his attendance, in the event the Petitioner-Ashish Padhy does not report before the Investigating Officer in the case at hand on 30.01.2023.

19. The CRLMA is accordingly disposed of.

20. Urgent certified copy of this order be issued as per rules.

(V. NARASINGH)
Judge

Pradeep