

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMA No. 301 of 2022

Basanta Kumar Behera

....

Petitioner

Ms. S, Jena, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. Karunakar Gaya, ASC

CORAM: JUSTICE V. NARASINGH

ORDER

04.11.2022

Order No.

01.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned counsel for the State
3. Order dated 01.11.2022 passed by the learned Additional Sessions Judge-cum-Special Judge, CBI-1, Bhubaneswar inter alia directing the petitioner to furnish cash security of Rs.6,00,000/- (Rupees Six Lakhs) while enlarging him on bail in B.A. No.1841 of 2022 arising out of Khandagiri P.S. Case No.521 of 2021 is the subject matter of challenge in the present CRLMA.
4. Petitioner is an accused in C.T. Case No.5568 of 2022 pending in the file of learned S.D.J.M. Bhubaneswar under Section 323/294/420/379/506/34 of IPC and he is in custody since 22.10.2022. Considering the prayer of the learned counsel for the petitioner the learned Court below was pleased to enlarge him on bail and while doing so, directed for deposit of cash security of Rs.6,00,000/- (Rupees Six Lakhs), as one of the conditions.

5. It is submitted by the learned counsel for the petitioner that because of his inability due to financial constraint in depositing the amount of Rs.6,00,000/- (Rupees Six Lakhs), as directed, in spite of the order passed the petitioner aged about 60 years is still in custody.

6. It is submitted by the learned counsel for the petitioner on instructions, that the amount involved in the case at hand is to the tune of Rs.26 lakhs and for said amount of Rs.26 Lakh, the informant as complainant filed 1CC Case No.1656 of 2019 and in the said case the complainant who is the informant in the case at hand has been examined and his evidence in chief is on record,

7. It is apt to state here that this Court in the case of *Pintu @ Sanjeev Chakrabarti v. State of Orissa* reported in **2004 (1) OLR 558** referring to the judgment passed by the apex Court has clearly enunciated the law that Court while granting bail should ensure not to impose the cash security as a condition precedent for enlarging the accused on bail as consequently for non-fulfilment of such condition the accused cannot be released.

8. It needs no emphasis that right to be released on bail, in an appropriate case has been considered to be a facet of Article 21 of the Constitution. Hence, time and again, the apex Court and this Court has expressed the concern and fixed the guidelines that while granting bail, the court ought not to act as a collecting agent.

9. In imposing the cash security, learned Court in seisin has lost sight of such salutary principle.

10. Taking into account the law laid down by the Apex Court and this Court as averted to above, to subserve the ends of justice, this Court is persuaded to interfere with the impugned order and accordingly the direction to impose cash security of Rs.6,00,000/-

(Rupees Six Lakhs) vide impugned order dated 01.11.2022 at Annexure-2 passed by the learned Additional Sessions Judge-cum-Special Judge CBI-1 Bhubaneswar is set-aside.

11. Other stipulations in the said impugned order remain unaltered.

12. Accordingly, the CRLMA stands disposed of.

13. Urgent certified copy of this order be granted as per rules.

(V. NARASINGH)
Judge

Santoshi

