

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2227 of 2021

Kalim Khan

Petitioner

Mr. P. K. Mishra, Advocate

-Versus-

State of Odisha

.... Opposite Party

Mr. T.K. Praharaj, SC

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

02.11.2022

Order
No.
02.

1. Heard learned counsel for the petitioner and learned counsel for the State.

2. Instant petition challenges the impugned order of cognizance dated 8th January, 2021 passed in G.R. Case No.160 of 2020 by the learned S.D.J.M., Angul and the entire criminal proceeding arising out of Jarapada P.S. Case No.19 of 2020 on the grounds stated therein.

3. Mr. Mishra, learned counsel for the petitioner referring to the copy of the FIR which is at Annexure-1 submits that though an allegation under Section 395 IPC is made therein, but the petitioner is not at all involved and he has been implicated merely on the strength of statement of co-accused.

4. While claiming so, Mr. Mishra refers to the statement of one of the accused, namely, Tapan @ Sushant Kumar Rout recorded under Section 161 Cr.P.C. It is submitted by Mr. Mishra that the petitioner was not at all involved in the alleged dacoity but had been to the spot when the vehicle was loaded with iron rod and thereafter, the materials were unloaded and soon thereafter, the

same was recovered by the police. Under the above circumstances, Mr. Mishra, learned counsel for the petitioner submits that there is no iota any evidence except the co-accused's statement to implicate the petitioner and therefore, the criminal proceeding as against him should be quashed which is strongly objected to by Mr. Praharaj, learned counsel for the State on the ground that all the accused persons are involved including the petitioner and there is material to show regarding the participation of the accused and hence, it is not a case for quashing of the criminal proceeding.

5. The Court perused the FIR and other connected documents including the statements of witnesses under Section 161 Cr.P.C. On perusal of the statement of Tapan @ Sushant Kumar Rout under Section 161 Cr.P.C. it appears to the Court that petitioner had been to the spot when the vehicle was stationed with stolen iron rods and thereafter, it was unloaded. Having considered the materials on record, the Court is of the view that the nature of involvement and also truthfulness or otherwise of the allegations can be subjected to scrutiny and analysis during trial. It is not the stage where the Court in exercise of inherent jurisdiction to assess and evaluate the evidence collected during investigation so as to form an opinion one way or the other vis-a-vis involvement of the petitioner. Thus, the Court is of the view that no case is made out for interference for quashing of the criminal proceeding pending before the court below in G.R. Case No.160 of 2020.

6. In course of hearing, however, Mr. Mishra, learned counsel for the petitioner submits that considering the nature of allegations made against petitioner, he should at least be directed to surrender and go on bail since because warrant of arrest has been issued by the learned S.D.J.M., Angul which is pending execution. On being

asked Mr. Mishra submits that the petitioner does not have any criminal antecedent.

7. In view of the above though the Court is not inclined in favour of quashing of the criminal proceeding but is of the view that the petitioner since does not have criminal antecedent as is submitted by the learned counsel appearing on his behalf and the fact that his involvement only to the extent discussed herein above, the Court is of the view that he should be directed to surrender before the learned court below and apply for bail.

8. Accordingly, it is ordered.

9. In the result, CRLMC stands disposed of with a direction to the petitioner to surrender before the learned S.D.J.M., Angul in connection with G.R. Case No.160 of 2020 arising out of Jarapada P.S. Case No.19 of 2020 on or before 18th November, 2022 and in the event, he surrender within the stipulated period, the court shall release him on bail subject to such conditions as deem just and proper in the facts and circumstances of the case.

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

(R.K. Pattanaik)
Judge