

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 11415 of 2021

Susanta Kumar Dhalasamanta & Petitioners
another

Mr. S.K. Padhy, Advocate

- Versus -

State of Odisha Opposite Party

Mr. P. Tripathy, Addl. Standing Counsel

CORAM:
JUSTICE SASHIKANTA MISHRA

ORDER
11.08.2022

Order No.
05.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioners and learned Addl. Standing Counsel for the State.
3. The petitioners are in custody since 10.03.2016 having been remanded in connection with Chauliaganj P.S. Case No. 27 of 2016 corresponding to G.R. Case No. 222 of 2016, now pending before the learned Sessions Judge, Cuttack in S.T. Case No. 35 of 2018 for the alleged commission of offence under Sections 387/120(B)/34 of IPC read with Section 25(1-B)(a)/25(1-AA)/27 of Arms Act.
4. The prosecution's case is that one Ajaya Kumar Das lodged a written report before the IIC, Chauliaganj Police Station alleging that while he was investigating Chauliaganj P.S. Case No. 12 of 2016, it came to light that the present petitioners were collecting huge amount of money by means of extortion and tender fixing etc. from different establishments relating to different works and also for Baligahts (sand quarries) lease, mines etc. through their associates. Huge amount of money and illegal arms and ammunitions was recovered from the house of the petitioners and seized.

5. It is submitted by Mr. S.K. Padhy, learned counsel for the petitioners that firstly, the petitioners have been entangled in the case without any acceptable evidence. Even otherwise, both of them have spent more than six years in custody by now and trial is yet to conclude. Referring to the provision under section 436-A of Cr.P.C., Mr. Padhy further argues that the offence under section 387 of IPC being punishable with a maximum term of 7 years of imprisonment and the petitioners having spent more than half of such period, are entitled to be released on bail. Mr. Padhy has relied upon the decision of the Supreme Court in the case of **Bhim Singh vs. Union of India** reported in (2015)13 SCC 605.

6. Mr. P. Tripathy, learned Additional Standing Counsel for the state has vehemently opposed the prayer for bail by submitting that the petitioners are hardened criminals having series of criminal cases against them. Moreover, they were running a crime syndicate in Cuttack exercising control over a network of criminals being involved in all sorts of crimes, such as, extortion, tender fixing, murder, assault etc. Since trial has already begun, it would not be proper to release the petitioners on bail as, given their criminal background, it is quite probable that they would try to threaten the witnesses or otherwise influence them.

7. I have considered the rival submissions and have also perused the materials on record including the case diary produced by learned State Counsel. There are materials to prima facie, show the complicity of the petitioners in the alleged occurrence. Undoubtedly, the petitioners have been in custody for more than six years. As regards the contention advanced by Mr. Padhy that the provision under section 436-A of Cr.P.C. would be applicable to the

case, it would be apt to refer to the said statutory provision at the outset which is quoted herein below:

“436A. Maximum period for which an undertrial prisoner can be detained.—Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.”

8. It is evident that the 1st proviso to Section 436A confers power on the court to order continued detention of the accused despite his detention for more than one half of the maximum period of sentence that could be imposed for the alleged offence. In the instant case, the maximum sentence that can be imposed for the offence under Section 387 is 7 years and therefore, on the face of it, the petitioners have spent more than half of the said period. But then it is also to be considered that the petitioners have multiple criminal cases against their names numbering more than 30, most of which relate to similar offences. They are also involved in graver offences. Trial is in progress with some witnesses being already examined. Some more witnesses remain to be examined. Given the criminal background of

the petitioners it is quite probable that if released, they may threaten or otherwise influence the witnesses to be examined in the trial.

9. Having regard to the above facts as also keeping the larger interest of the society in view, I am not inclined to allow the prayer for bail, which is therefore, rejected.

10. The bail application is rejected.

(Sashikanta Mishra)
Judge

A.K. Rana

