

# **Narendra Kumar Sahu vs State Of Orissa .... Opposite Party on 15 November, 2022**

**Author: R.K. Pattanaik**

**Bench: R.K. Pattanaik**

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 3460 of 2022

Narendra Kumar Sahu

....

Petitioner

Mr. Manas Kumar Chand, Advocate

-Versus-

State of Orissa

....

Opposite Party

Mr. S.S. Mohapatra, A.S.C.

CORAM:

MR. JUSTICE R.K. PATTANAIAK

ORDER

16.11.2022 Order No.

01. 1. Heard Mr. Manas Kumar Chand, learned counsel for the petitioner and Mr. S.S. Mohapatra, learned Additional Standing Counsel for the State.

2. Instant petition under Section 482 Cr.P.C. is filed by the petitioner assailing the impugned order dated 2nd November, 2022 passed by the learned Sessions Judge, Ganjam, Berhampur in B.A. No.977 of 2022 corresponding to G.R. Case No.2061 of 2022 pending in the file of learned S.D.J.M., Berhampur on the grounds stated therein.

3. On a report being lodged, Berhampur Sadar P.S. Case No.390 dated 30th August, 2022 was registered under Sections 420, 272, 273, 34 IPC, Section 20 and 24 of the Cigarettes and Other Tobacco Products Act, 2003 besides Sections 51, 52, 53, 56, 57, 59 and 63 of Food Safety and Standards Act, 2006.

4. Mr. Chand, learned counsel for the petitioner submits that petitioner was allowed interim bail by order of the learned Sessions Court vide order dated 11th October, 2022 for 6 days and thereafter for about 2 weeks vide order dated 17th October, 2022. It is submitted by Mr. Chand, learned counsel for the petitioner that petitioner was granted interim bail on two occasions but finally the learned Sessions Court disposed of the regular bail application granting liberty to him to move for fresh bail after expiry of the interim bail period expiring on 17th November, 2022 thereby committed the illegality. It is contended that though the decision in Satender Kumar Antil Vrs. Central Bureau of Investigation reported in 2022(3) Crime 290(SC) referred to, the learned Sessions Court abandoned the course of action and instead disposed of the regular bail application and that too when anticipatory bail in ABLAPL No.11151 of 2022 vis-à-vis a co-accused is still pending consideration with the interim protection in force.

5. Mr.S.S. Mohapatra, learned Additional Standing Counsel for the State submits that the petitioner is at liberty to move the learned Sessions Court by filing a regular bail application as well as seeking interim relief and therefore, the impugned order dated 2nd November, 2022 cannot be faulted with. That apart, question of jurisdiction has been raised by Mr.Mohapatra, learned Additional Standing Counsel for the State on the ground, if at all there is disposal of the bail application, the petitioner would be at liberty to approach the court below and plead for regular bail under Section 439 Cr.P.C.

6. The order sheet of the learned Sessions Court is at Annexure-2 and the same is perused. Admittedly, the petitioner was granted interim bail in two phases and finally the bail application was disposed of on 2nd November, 2022. In fact, the learned Sessions Judge followed a course of action since the co-accused had been on interim protection in ABLAPL No.11151 of 2022 which is claimed to be still pending before this Court keeping in view the law laid down in Satyendra Kumar Antil (supra) but then, the impugned order dated 2nd November, 2022 was passed disposing of the regular bail application, which, in a considered view of the Court, should not have been resorted to and without justification, inasmuch as, an opportunity of hearing ought to have been provided to the petitioner before disposing it of finally.

7. Mr. Chand, learned counsel for the petitioner submits that apart, even on merits, no prima facie case is made out with regard to the offences under Sections 272 and 273 IPC and cites a decision in the case of Sri Jaganath Enterprises Vrs Vrs. The State of Andhra Pradesh Through SHO, Pamur P.S. decided in Crl. P. No. 5421 of 2019 and disposed of on 18th December, 2019 with batch of cases. The Court is of the view that such a question is not the subject matter of this Court and whether the offences of IPC are made out or not can be examined and adjudicated upon on the challenge of the petitioner at appropriate stage of the criminal proceeding.

8. Considering the submissions of learned counsel for the petitioner and State and in view of the fact that regular bail application was disposed of, having regard to peculiar facts and circumstances of the case, the Court is of the conclusion that it should be restored to file for providing opportunity to the petitioner to participate and plead for appropriate relief therein including for interim bail. In other words, the Court is of the view that the impugned order dated 2nd November, 2022 passed in B.A. No.977 of 2022 by the learned Sessions Judge, Berhampur, Ganjam should be interfered with and set aside.

9. Accordingly, it is ordered.

10. In the result, the CRLMC stands disposed of. Consequently, the impugned order dated 2nd November, 2022 passed in B.A. No.977 of 2022 corresponding to G.R. Case No.2061 of 2022 by the learned Sessions Judge, Berhampur, Ganjam is hereby set aside and as result, original bail application stands restored to file. The petitioner is granted liberty to surrender on expiry of the interim bail period and approach the learned court below applying for appropriate relief which shall be considered and orders passed thereon as per and in accordance with law.

11. Issue urgent certified copy of this order in course of the day.

(R.K. Pattanaik) Judge U.K.Sahoo