

M.M.DAS, J.

BLAPL NO.5690 OF 2009 (Decided on 29.6.2010)

PRASANT KUMAR SAHOO

.....

Petitioner

.Vrs.

STATE OF ORISSA

.....

Opp.Party.

CRIMINAL PROCEDURE CODE, 1973 (ACT NO.2 OF 1974) – SEC.439.

For Petitioner - M/s. J.Patnaik, J.K.Panda & S.Panigrahi.

For Opp.Party – Mr. Goutam Mishra,

Addl.Standing Counsel.

M.M. DAS, J. The petitioner in this application under section 439 Cr.P.C. has approached this Court for the second time for grant of bail. He is a co-accused in C.T. Case No. 1 of 2009 corresponding to G.R. Case No. 1991 of 2007 arising out of Saheednagar P.S. Case No. 155 of 2007 now pending trial in the court of the learned Sessions Judge, Khurda at Bhubaneswar. Accusation of commission of offence under sections 364(A)/302/201/120-B IPC read with sections 25 and 27 of the Arms Act has been made against the accused persons.

2. This Court earlier, while dealing with the prayer for bail made by the petitioner in BLAPL No. 5766 of 2008, by order dated 18.6.2008 taking note of the allegations made by the prosecution recorded as follows:-

“The offence is a very heinous one involving kidnap of two persons and murder of at least one of them. The whereabouts of Rasmi Ranjan is not yet known nor it is known whether he is dead or alive. Contrary to the assertion of the learned counsel for the petitioner, the present petitioner has been named not only by witness Pravat Nath, but also witness Prasant Kumar Mohapatra and Pradip Kumar Mohapatra, who are none other than the brothers of Rasmi Ranjan.

Having regard to the nature and gravity of the offence I do not feel to grant bail to the petitioner and accordingly the BLAPL is rejected.”

Subsequent to rejection of the prayer for bail made by the petitioner, he again approached this Court in BLAPL No. 16440 of 2008 making a prayer to release him on interim bail. By orders passed in the said bail application on 10.12.2008, the petitioner was released on interim bail for a period of 60 days and again in Misc. Case No. 265 of 2009 filed in the said bail application, the petitioner was released for a further period of 60 days on bail.

3. Mr. J. Patnaik, learned senior counsel appearing for the petitioner vehemently urged that the petitioner has remained in custody since more than two years as alleged by the petitioner. He further

submitted that in connection with the self-same offence, another case was lodged in Bolangir Town Police Station, registered as G.R. Case No. 33 of 2008, in which, the witness Prabhat Nath, who is alleged to have implicated the petitioner in this case, gave a statement under section 164 Cr.P.C. before the Magistrate on 28.10.2007 where, he has not implicated the petitioner and the petitioner has been granted bail in the said case. Mr. Patnaik further submitted that other cogent grounds for passing an order in favour of the petitioner by releasing him on bail are that in the meantime, the three witnesses, whose statements were relied upon for rejecting the previous prayer for bail made by the petitioner in order dated 18.6.2008 in BLAPL No. 5766 of 2008, i.e., Prabhat Nath, Prasant Kumar Mohapatra and Pradip Kumar Mohapatra, have been examined in the meantime during the course of trial of the sessions case. The said witnesses have not implicated the petitioner with the alleged offence in any manner. The other ground canvassed on behalf of the petitioner is that, three of the co-accused persons, namely, Amit Kumar Choudhury, Gayatri Biswal and Jajati Keshari Biswal have been directed to be released on bail by this Court in BLAPL Nos. 9569 of 2008, 4670 of 2009 and 275 of 2009 respectively.

4. The prosecution has alleged that on 28.5.2007, the complainant Babu @ Dilip Kumar Behera lodged an information before the I.I.C., Saheednagar Police Station stating that on 25.5.2007 at about 2.30 P.M., his brother-in-law Chinu @ Rashmi Ranjan Mohapatra and his driver - Naba Kishore Mohanta have been kidnapped from Bhubaneswar with their INNOVA Car while they were coming to Bhubaneswar for purchasing marble from Sri Ram Marbles situated at Cuttack-Puri road, Bhubaneswar. It was further stated in the F.I.R. that in the same night at 10.00 P.M. the kidnappers made a call demanding a ransom from the family members of Rashmi Ranjan amounting to Rs. 2.00 crores for their release, who also cautioned that this should not be informed to the police. On the basis of the said report, the I.I.C. Saheednagar Police Station registered a case for commission of alleged offence under section 364 (A) IPC. During the course of investigation, the INNOVA Car was recovered from Dhanbad Railway Station and on the next day, the dead body of the driver Naba Kishore Mohanta was also recovered by the OIC of Sonahat Police Station, Ranchi and a case was registered in the said Police Station under sections 302/201/364(A)/120-B IPC read with sections 25 and 27 of the Arms Act. Thereafter, on completion of the investigation, the police has submitted a charge sheet against the petitioner and the other co-accused persons for the commission of the above alleged offences. By now, it has been established that said Rashmi Ranjan was also murdered. In the meantime, the case has been committed and is being tried by the learned Sessions Judge, Khurda at Bhubaneswar.

5. Mr. G.Mishra, learned counsel for the State submitted that it is not correct on the part of the petitioner to state that the three witnesses named in the order of rejection of bail by this Court earlier, have not implicated the petitioner. He further submitted that the co-accused persons stand on different footing altogether and with regard to the allegation of conspiracy, Mr. Mishra submitted that as laid down by the Supreme Court in the case of **Kehar Singh and others v. The State (Delhi Admn.)** AIR 1988 SC 1883, conspiracy is always hatched in secrecy, which can only be revealed on examination of the prosecution witnesses during trial of a case, thus establishing the commission of the said offence by the accused persons. Mr. Mishra further submitted that this Court having rejected the prayer for bail of the petitioner earlier on the ground that the petitioner has been implicated in commission of the alleged offence by the witnesses examined during investigation, which, in other words, amounts to finding of a prima facie case against the petitioner, it would not be appropriate for this Court to appreciate the evidence adduced by those three witnesses during the course of trial to find out as to whether the petitioner has been implicated with the alleged offence, as this would influence the trial of the sessions case. He further contended that even considering the statements of the said three witnesses, it would be seen that the petitioner has been directly implicated. The copies of the depositions of the above named three witnesses were produced before this Court.

6. On perusal of the evidence of Pradip Kumar Barik adduced before the learned Sessions Judge, it appears, prima facie, that he has named the petitioner to have been involved in commission

of the alleged offence. The petitioner has also been named by the witness Parsuram Samal. The witness Prabhat Nath in his deposition before the learned Sessions Judge has also implicated the petitioner. Therefore, the contention that the said witnesses have not named the petitioner is not at all correct. Further, as contended by Mr. G. Mishra, learned counsel for the State, this Court is of the view that at this juncture when the sessions trial is in progress, it would not be appropriate for this Court to appreciate the evidence adduced before the court below and, more so, when the other prosecution witnesses are yet to be examined, for considering an application for bail which was earlier rejected by this Court.

7. With regard to the statement recorded under section 164 Cr.P.C. of the said Prabhat Nath, in the case registered at Bolangir, this Court is of the view that the said Prabhat Nath has not been confronted with the said statement recorded under section 164 Cr.P.C. during his cross-examination in the present session trial, and, therefore, the said statement has no bearing on this case for consideration of the prayer for bail.

8. Mr. Mishra, learned counsel for the State relied upon the judgment in the case of **Kumari Suman Pandey v. State of Uttar Pradesh and another**, (2007)12 SCC 364 and submitted that the Supreme Court in the said case has laid down the guidelines with regard to the facts, which are to be considered by a court hearing an application for bail. In the said case, the Supreme Court held that a court granting bail to an accused should indicate in the order the reasons for prima facie concluding why bail is being granted, particularly where an accused is charged of having committed a serious offence and it is necessary for the courts dealing with application for bail to consider among other circumstances, the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence; reasonable apprehension of tampering of the witness or apprehension of threat to the complaint and prima facie satisfaction of the court in support of the charge. The Supreme Court also indicated that any order dehors such reasons suffers from non-application of mind as was noted by it in the cases of **Rama Govind Upadhyay v. Sudarshan Singh** (2002)3 SCC 598 and **Gajanand Agarwal v. State of Orissa**, (2006)12 SCC 131.

9. Law with regard to dealing with second bail application or consecutive bail applications was vividly dealt with by this Court, referring to various judgments of the apex Court, in the case of **Sri Braja Bhai v. state of Orissa**, 2008 (II) OLR 161. It would be profitable to mention here that though an argument was advanced on behalf of the petitioner that grant of bail to other co-accused persons is a ground for considering a second bail application of an accused as it is found that the said co-accused persons, who have been released on bail clearly stand on different footing than the petitioner, this Court is not inclined to consider the said contention in the present case. The Supreme Court has categorically laid down in the case of **Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and another** (2005) 2 SCC 42 that even though there is room for filing of a subsequent bail application in cases where earlier bail applications have been rejected, the same can be done, if there is a change in the fact situation or in law, which requires the earlier view to be interfered with or where the earlier finding has become obsolete. In the said case, the Supreme Court finding that in a previous order, by which the prayer for bail was rejected, it having been held that there was existence of prima facie case against the respondent concluded that there is no scope for re-agitating the said point on the part of the respondent while contending that there is no prima facie case made out against him.

10. In the order of rejection of bail passed by this Court earlier, in the case of the petitioner, though not specifically stated, this Court found that a prima facie case exists against the petitioner, and, therefore, in this application, it cannot be contended that there is no prima facie case made out against the petitioner.

11. Hence, this Court finds that none of the grounds canvassed by Mr. Patnaik in support of the prayer for grant of bail can be considered to be either changed circumstances or such, that it requires the earlier view of this Court to be interfered with. Except the fact that the petitioner was released on interim bail twice in the interregnum, this Court does not find any changed circumstance inasmuch as releasing the petitioner on interim bail cannot be a consideration for granting bail to the petitioner.

12. In view of the above findings, this Court is not inclined to grant the prayer for bail to the petitioner, which is accordingly rejected.

13. The BLAPL is accordingly dismissed.

Application dismissed.