

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC NO.2452 OF 2023

(From the order dated 5th May, 2023 passed by learned J.M.F.C.-IV, Cuttack in G.R. Case No.252/2023)

Chinmaya Sahu

...

Petitioner

-versus-

State of Orissa

...

Opposite Party

Advocates appeared in the case through hybrid mode:

For Petitioner: Mr.B.P.Pradhan,
Advocate

सत्यमेव जयते -versus-

For Opp.Party: Mr.S.K.Mishra,
Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
20.7.2023.

Sashikanta Mishra,J. The Petitioner, in the present application filed under Section 482 of Cr.P.C. seeks to challenge the

order dated 5th May, 2023 passed by learned J.M.F.C.-IV, Cuttack in G.R. Case No.252/2023 whereby the bail bond furnished by him was cancelled and the I.O. was permitted to arrest him as per law.

2. The facts, relevant only for deciding the present case are that the Petitioner was arrayed as an accused in G.R. Case No.252/2023 of the Court of J.M.F.C.-IV, Cuttack for the alleged commission of offence under Section 304/34 I.P.C. By order dated 29th March, 2023 the Petitioner was granted bail taking note of the fact that the alleged offences are bailable in nature. Accordingly, he furnished bond of Rs.20,000/- with one surety as directed by the Court and was released on bail. Subsequently, the I.O. made a prayer for cancellation of the bail on the ground that in course of investigation further offences were found to have been committed by the accused i.e. offences under Sections 420/465/467/471/409/120-B of I.P.C. Considering such prayer made by the I.O., the Court below, by the

impugned order cancelled the bail bond furnished by the Petitioner permitting the I.O. to arrest him.

3. Heard Mr. B.P.Pradhan, learned counsel for the Petitioner and Mr. S.N.Das, learned Addl. Standing Counsel for the State.

4. Assailing the impugned order, Mr. Pradhan would argue that firstly, learned Magistrate has no jurisdiction to cancel the bail as the accused was bailed out earlier as per the provisions of Section 436 of Cr.P.C. Therefore, cancellation of bail, if at all, could only have been ordered either by the Court of Session or the High Court under the provisions of Section 439(2) of Cr.P.C. Mr. Pradhan would further submit that even otherwise, the principles of natural justice were completely violated inasmuch as no opportunity of hearing whatsoever was accorded to the Petitioner before cancelling the bail.

5. In support of his contentions, Mr. Pradhan has relied upon the judgments of the Apex Court in the

case of **P.K.Shaji @ Thammanam Shaji v. State of Kerala**; reported in (2005) 13 SCC 283 and **Gurdev Singh and another v. State of Bihar and another**; reported in (2005) 13 SCC 286.

6. Mr. S.N.Das, learned State counsel, fairly submits that the Petitioner having been bailed out under the provisions of Section 436 of Cr.P.C., the power of cancellation granted to the Magistrate under Sub-section (5) of Section 437 of Cr.P.C. is not available to be applied, rather the appropriate provision is Sub-section (2) of Section 439 of Cr.P.C. Mr. Das however, submits that giving of notice to the Petitioner would have been an empty formality in view of the decision of the Apex Court rendered in the case of **Pradeep Ram vs. State of Jharkhand and another**; reported in (2019) 17 SCC 326, as per which, once higher offences are added, an accused, who is already on bail, can be directed to be arrested and committed to custody.

7. I have considered the rival submissions and have also examined the relevant statutory provisions

carefully. There is no dispute that the Petitioner was granted bail earlier as per Section 436 of Cr.P.C. since the alleged offence was bailable in nature. There is also no dispute that in course of hearing higher offences were added i.e. offences under Sections 420/465/467/471/409/ 120-B of I.P.C. On such basis the I.O. made a prayer for cancellation of the bail. In so far as making a motion for cancellation of the bail upon addition of higher offences is concerned, the I.O. cannot possibly be faulted with in view of the ratio decided in **Pradeep Ram (supra)**. However, when it comes to curtailment of liberty of a person, it is incumbent for the Courts to follow the principles of natural justice by according opportunity of hearing to him. The Apex Court in the cases of **P.K.Shaji @ Thammanam Shaji** and **Gurdev Singh and another (supras)** have referred to the maxim *audi alteram partem* to hold that the accused must be heard before his bail is cancelled. To the above extent therefore, the argument of Mr. Pradhan is acceptable.

8. However, the main point to be noted is, whether the Magistrate had the jurisdiction to cancel the bail in the first place. The power of the Magistrate to cancel the bail already granted is conferred by Sub-Section (5) of Section 437 of Cr.P.C., which reads as follows;

“437 (5). If a court has granted someone bail under subsections (1) or (2) of Section 1, it can order that person to be arrested and taken into custody if it deems it appropriate”.

9. A bare reading of the provision would make it clear that such power is relatable only in case bail has been granted under Sub-Section (1) or Sub-section (2) of Section 437 of Cr.P.C. As already stated, the Petitioner was not granted bail under the provisions of Section 437 (1) or (2) but Section 436 Cr.P.C. Section 436 Cr.P.C. itself does not contain any provision for cancellation of bail. However, Sub-Section (2) of Section 439 of Cr.P.C. appears to be only the provision conferring such power, but only on the High Court or Court of Session and reads as follows;

“439(2). A High Court or Court of Session may direct that any person who has been released on bail under

“this Chapter be arrested and commit him to custody.” (Emphasis added)

10. The words ‘under this chapter occurring in Sub-Section (2) are highly significant inasmuch as Section 436 of Cr.P.C. also is included under Chapter XXXIII. Therefore, bail granted under Section 436 of Cr.P.C. can only be cancelled by invoking the power under Sub-Section (2) of Section 439 of Cr.P.C.

11. A similar case was also dealt with by a Division Bench of this Court in the case of **Madhab Chandra Jena and another v. State of Orissa**; reported in 63 (1987) C.L.T. 226, wherein reference was made to the provision under Section 439(2) in case of cancellation of bail. In another similar case, this Court in the case of **Kalia vs. State of Orissa**; reported in (1999) 17 OCR 398 has also taken identical view.

12. From a conspectus of the analysis of the relevant provisions as made hereinbefore, it is evident that the impugned order being contrary to law, cannot be sustained.

13. For the foregoing reasons therefore, the CRLMC is allowed. The impugned order dated 5th May, 2023 passed by learned J.M.F.C.-IV, Cuttack in G.R. Case No.252/2023 is hereby quashed.

.....
(Sashikanta Mishra)
Judge

Ashok Kumar Behera



Signature Not Verified

Digitally Signed
Signed by: ASHOK KUMAR BEHERA
Designation: A.R.-CUM-SR.SECRETARY
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 21-Jul-2023 13:22:59