

3. 04.11.2020

In view of extra-ordinary situation arose out of COVID-19, the matter is taken up through video conferencing.

This application under Section 439 Cr.P.C. has been made on 12.06.2020 by the petitioner in connection with Narayanpatan P.S. Case No.50 of 2009 corresponding to C.T. Case No.114 of 2014 (G.R. Case No.165 of 2009) for the offence under Sections 147/148/120-B/323/324/294/452/307/506/395 and 149 of the IPC read with Section 27 of Arms Act and Section 7 of Criminal Law Amendment Act pending in the court of learned Assistant Sessions Judge, Koraput.

Heard learned counsel for the petitioner and learned Addl. Standing Counsel.

This is a successive bail petition U/s.439 of Cr.P.C. after rejection of the last one on 07.01.2019. The petitioner is in custody since 29.10.2014.

2. The Hon'ble Supreme Court in SLP No.10207 of 2019 preferred against the aforesaid bail rejection order passed by this court, had passed order on 03.03.2020 as follows:-

“We, therefore, grant the State six weeks’ time to examine all the witnesses. The respondent and the petitioner-accused would not take any adjournment. The trial court is also directed not to grant any adjournment.

In case the prosecution fails to produce and examine all the witnesses within the said period of six weeks, it will be open to the

petitioner to file an application for bail before the trial court, which would be then granted on terms and conditions fixed by the trial court.”

3. Thereafter, learned Asst. Sessions Judge, Koraput passed an order on 15.04.2020 on the bail petition mentioning inter alia as follows:-

“In the circumstances, it can be said that the period of non-participation of the Bar Members, suspension/Lock-down i.e. from 18.03.2020 till today i.e. 15.04.2020 is to be excluded from the six weeks period as mandated by the Hon’ble Supreme Court of India vide order dated 03.03.2020 passed Special Leave Petition No.10207/2019. Therefore, no fault can be attributed to the prosecution for the non-examination of the remaining prosecution witnesses. As the non-examination prosecution witnesses during the period from 18.03.2020 till 15.04.2020 is beyond the control of the prosecution, due to pandemic situation, that does not confer any benefit to file the present bail application. Therefore, the bail application filed by the learned Advocate for the accused is prematured, hence rejected.”

4. It is submitted by the learned counsel for the petitioner that despite notification of this Court to take up urgent bail matters by the subordinate courts and

direction of the Hon'ble Supreme Court, the prosecution has failed to procure the remaining four witnesses and thereby the order of the Hon'ble Supreme Court has not been given effect in true spirit.

Yesterday i.e. on 03.11.2020, learned counsel for the petitioner filed the memo annexing the photocopy of the order dated 28.10.2020 passed in Miscellaneous Application No.1936/2020 by the Hon'ble Supreme Court, to the effect that :-

"This miscellaneous application is filed by the petitioner seeking compliance of this Court's order dated 03.03.2020.

After perusing the material available on record, we find that even though the petitioner has moved an application for bail before the High Court which came up for hearing on 01.07.2020 and since then the matter has not been taken up.

Taking into consideration the fact that this matter relates to bail and personal liberty of the petitioner, we request the High Court to dispose of the matter pending before it expeditiously and preferably within a period of two weeks from the date of communication of this order.

This Miscellaneous Application stands disposed of in the afore-stated terms."

5. In course of hearing, learned Addl. Standing Counsel fairly submits that the direction of the Hon'ble Apex Court

in no circumstances can be overridden by any authority much less by subordinate courts.

6. This Court vide Notification dated 21.08.2020, had given direction to all subordinate courts to resume normal trial in respect of UTP and this has been communicated to all the authorities including the State. In the meantime, more than two months have been elapsed.

7. In the premises, this Court does not admit any reasoning regarding the gravity of offence to withhold the bail as ordered by the Hon'ble Apex Court vide order dated 03.03.2020. Hence, in terms of the aforesaid direction of the Hon'ble Apex Court, the petitioner is allowed to be released on bail by the trial court on furnishing bail bond to be fixed by the learned court in seisin over the matter in the aforesaid case, subject to other conditions as deemed just and proper by the learned court below.

The bail application is accordingly disposed of.

Parties may access copy of this order in Court's official website and utilize the same as per the Notice No.4587 dtd.25.03.2020 and Notice dtd.15.04.2020 issued by the Registrar General of this Court. Copies of the aforesaid notices are available in Court's Official Website.

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Dr. A.K. Mishra, J.

