



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.423 of 2023

***Tulia @ Nigamananda
Jena***

***.... Appellant/
Petitioner***

Mr. Devashis Panda, Advocate

-versus-

State of Odisha

***.... Respondent/
Opp. Party***

*Mr. S.C. Pradhan,
Addl. Standing Counsel
Mr. Gouri Mohan Rath, Advocate*

CORAM:

**THE HON'BLE MR. JUSTICE S.K. SAHOO
THE HON'BLE MR. JUSTICE S.S. MISHRA**

ORDER

01.12.2025

I.A. No.926 of 2023

Order No.

15. This matter is taken up through Hybrid arrangement
(video conferencing/physical mode).

This is an application for bail.

Perused the order dated 07.05.2024 of the Hon'ble
Supreme Court which reads thus:

*"The self-same petitioner, who is the complainant in
Crime No.359 of 2015, registered at Police Station
Sadar, Cuttack, Orissa, filed the captioned Special
Leave Petitions seeking leave to challenge three
different orders dated 09.10.2023, passed by the High
Court of Orissa at Cuttack in three different Criminal
Appeals.*

*In Special Leave Petition (Crl.) Nos.457 and 458 of
2024, the party-respondents, were accused in Crime
No. 359/2015. After the trial, they were convicted for
the offences punishable under Sections 302, 452, 392,*



120-B read with Section 34 of the Indian Penal Code (for short 'IPC) and Section 25(1-B)/27 of the Arms Act. Against the conviction and the consequently imposed sentence, they filed CRLA Nos.629/2023 and 758/2023 respectively.

The first respondent, in SLP(Crl.) No.459 of 2024, was convicted under Section 320 read with Section 34 and Section 120-B of the IPC in the self-same crime and against the conviction and sentence imposed, preferred the CRLA No.423/2023 before the High Court.

In the aforementioned appeals, the said convicts filed applications for suspension of sentence under Section 389 of the Criminal Procedure Code, 1973 (Cr. P.C.). The appeals were heard and separate orders were passed on 09.10.2023 by the High Court of Orissa, at Cuttack.

The complainant-petitioner is before this Court challenging the orders passed in the interlocutory applications filed by the respondents seeking suspension of sentence.

Heard learned Senior Counsel appearing for the petitioner, learned counsel appearing for the State and learned counsel appearing for the party-respondents.

With reference to the orders sought to be impugned, it is submitted by the learned Senior Counsel appearing for the petitioner that a bare perusal of the same would reveal that it was passed without adhering to the guidelines issued by this Court in the matter of consideration of applications for suspension of sentence under Section 389 of the Cr. P.C.

To buttress the said contention, the learned Senior Counsel brought our attention to the decision of this Court in *Atul Tripathy vs. State of Uttar Pradesh & Ors.* reported in (2014) 9 SCC 177. Our attention was drawn to the legal position summarized in paragraph 15 of the said decision, which reads thus:-

"15. To sum up the legal position:

15.1 The appellate court, if inclined to consider the release of a convict sentenced to punishment for death or imprisonment for life or for a period of ten years or more, shall first give an opportunity to the public prosecutor to show cause in writing against such release.



15.2 On such opportunity being given, the State is required to file its objections, if any, in writing.

15.3. In case the public prosecutor does not file the objections in writing, the appellate court shall, in its order, specify that no objection had been filed despite the opportunity granted by the Court.

15.4 The Court shall judiciously consider all the relevant factors whether specified in the objections or not, like gravity of offence, nature of the crime, age, criminal antecedents of the convict, impact on public confidence in court, etc. before passing an order for release."

In the light of the legal position summarized thereunder, it is submitted that no volume of argument is required to establish that the impugned order did not satisfy a consideration in the light of the legal position enunciated thereunder and the said fact is self-evident from order itself.

It is true that in terms of the law enunciated under Atul Tripathy's case (supra) opportunity was given to the State to file objection, if any, in writing. However, the orders would reveal that availing the opportunity, no objection in writing was filed, though, the prosecutor had entered the appearance.

Paragraph 15.3 in Atul Tripathy's case (supra) enjoins the Court concerned to specifically record in the order that despite giving opportunity to file an objection in writing, no objection was filed on behalf of the State, in such eventuality.

Paragraph 15.4 thereof enjoins the Court in the event of such objections not being filed, to consider judiciously all the relevant factors including the gravity of the offence, nature of the crime, age, criminal antecedents of the convict, impact on public confidence in the Court, etc., before passing an order of such applications.

Bearing in mind the legal position, thus, enunciated in the decision in Atul Tripathy's case (supra) if the order under challenge is analysed it would only reveal absolute absence of such consideration required under law.



When that be the indisputable position obtained in the impugned orders, which fact remains uncontroverted, the impugned orders are liable to be interfered with. Consequently, the orders passed in Criminal Appeal Nos.629 of 2023, 758 of 2024 and in 423 of 2023, all dated 09.10.2023, are set aside. As a necessary sequel the Interlocutory Applications filed by the party respondents, which culminated in the aforesaid orders are restored to its original numbers to file of the High Court, to be disposed of afresh.

Needless to say that the said interlocutory applications filed in the pending Criminal Appeals mentioned above be listed for consideration, on 15.05.2024 to enable the Hon'ble Judge concerned to post them suitably and to dispose of, preferably, on or before the closure of the High Court for summer vacation.

In the circumstances obtained, despite the setting aside of the impugned order, we enlarge the party respondents, who are the appellant-convicts in the aforesaid pending appeal on bail, on the strength of the bail already granted, till 15.05.2024 on which date the Court may pass appropriate orders in the matter of its continuance or otherwise pending disposal of the interlocutory application for suspension of sentence."

After the said order was passed on 07.05.2024, the matter was taken up on 15.05.2024 by the Coordinate Bench and the bail order of the appellant by order dated 09.10.2023 passed in I.A. No.926 of 2023 which was set aside by the Hon'ble Supreme Court was directed to be continued till the next date to be listed on 28th June, 2024 along with CRLA No.629 of 2023, CRLA No.758 of 2023 and CRLA No.1141 of 2023 . Thereafter, the matter was listed on 26.07.2024, 16.08.2024, 06.09.2024, 08.10.2024, 11.02.2025, 18.03.2025 and on 22.04.2025, but the bail order granted on 15.05.2024 till 28th June, 2024 was not extended further. We are informed that the



appellant has not yet surrendered despite non-extension of the bail order.

Let the appellant surrender by 06.12.2025.

The matter be listed on 10.12.2025 along with CRLA No.629 of 2023, CRLA No.758 of 2023 and CRLA No.1141 of 2023.

The Surrender Certificate shall be produced. The bail application will be considered on next date of hearing.

A free copy of the order be handed over to the learned counsel for the State.

If the appellant fails to surrender by 06.12.2025, the Superintendent of Police/ Commissionerate of Police, Bhubaneswar-Cuttack shall ensure that the appellant is arrested and produced before the learned trial Court. Thereafter, the learned trial Court shall remand the petitioner to the judicial custody and report to this Court.

(S.K. Sahoo)
Judge

(S.S. Mishra)
Judge

Subhasis

Signature Not Verified

Digitally Signed
Signed by: SUBHASIS MOHANTY
Designation: Personal Assistant
Reason: Authentication
Location: High Court of Orissa, Cuttack.
Date: 02-Dec-2025 12:32:07

