

SUPR EME COUR T OF I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).5443/2008

(From the judgement and order dated 19/02/2008 in CRLMC No. 2246/2007 of The HIGH COURT OF ORISSA AT CUTTACK)

BASANTILATA PATI Petitioner(s)

VERSUS

STATE OF ORRISA & ANR. Respondent(s)

(With appln(s) for cancellation of bail and office report))

WITH SLP(Crl) NO. 6435 of 2008
(With appln. for cancellation of bail and office report)

Date: 24/07/2009 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V.S. SIRPURKAR
HON'BLE DR. JUSTICE B.S. CHAUHAN

For Petitioner(s) Mr. Suchit Mohanty, Adv.
Mr. Amit Sharma, Adv.
Mr. Anupam Lal Das,Adv.

For Respondent(s) Mr. Radha Shyam Jena,Adv.
Mr. Janaranjan Das ,Adv
Mr.Swetaketu Mishra, Adv.
Mr. P.P.Nayak, Adv.
Mr. Vineet Bhagat, Adv.

UPON hearing counsel the Court made the following
ORDER

Leave granted.

The appeal is allowed in terms of the signed order.

(Shashi Sareen) (Shashi Bala Vij)
Court Master Court Master

(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1355 OF 2009
(Arising out of SLP(Crl.) No. 5443 of 2008)

BASANTILATA PATI ... Appellant(s)

Versus

STATE OF ORISSA AND ORS. ... Respondent(s)

with Crl. A. No. 1356/2009 @ SLP(Crl) No. 6435/2008

ORDER

SLP(C) No. 5443/2008:

Leave granted.

This is a very strange case where an accused against whom 18 cases were pending went straight to the High Court challenging the order issuing non-bailable warrants against him. Admittedly, the said accused before the High Court went up only by way of petition under section 482 Cr. P.C. The High Court has noted that the concerned accused had gone to Vishakhapatnam to undergo surgery and thereafter he absconded and did not abide by the order of the Court. In spite of that the High Court straightway proceeded to pass the order directing him to surrender before the Judicial Magistrate, First Class, Kujang and further directed that if he so surrenders before the Court he would be released on bail of Rs. 50,000/- with two sureties. We are surprised at

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the course undertaken by the High Court in granting bail u/s 482 Cr.P.C. even when the accused had not filed any bail application either before the trial court or before it. It is not a case where the bail application was made by the accused and was rejected and he approached the High Court for grant of bail. It was simply that a non-bailable warrant of arrest was issued on the ground of his remaining absconded. Ordinarily the High Court should have followed the following factors:

1) that the accused was absconding

2) that the accused has allegedly committed the present offence while he was on bail

The accused had a criminal past since 17 criminal cases were pending against him. We wonder as to how the order of directing trial court to grant bail to him on his surrender could be passed. Under such circumstances we do not find any

consideration of any of these factors in the High Court order. This is apart from the fact that the State Government has now filed an affidavit wherein in paragraph 5 it is pointed out that even after the accused was released on bail he did not complete the conditions imposed.

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Learned counsel appearing for the respondent points out that the trial has almost come to an end and therefore it would not be proper for us to set aside the order of the High Court now and cancel the bail. We do not agree with the above submission merely because the trial has come to fag end would not justify allowing a totally unsustainable order of the High Court to continue.

The order of the High Court is set aside. The appeal is allowed and the State Government is directed to take the accused in custody as soon as possible for that purpose of non-bailable warrant issued against him.

SLP(Crl.) No. 6435/2008:

Leave granted.

The appeal is filed against the order passed by the learned Single Judge of the High Court granting bail to the respondent Baba @ Aasutosh Swain. We have seen the order ourselves. The order is absolutely a silent order. It does not show any application of mind and seems to have been passed mechanically. The criminal past of the accused, the nature of seriousness of the allegations against him do not appear to have been considered. His earlier application for grant of bail was already rejected. Therefore, he was expected to bring this fact before the High Court. Under

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the circumstances the order is set aside. The accused shall be taken into custody. The appeal is allowed in these terms.

.....J.
(V.S.SIRPURKAR)

.....J.
(B.S.CHAUHAN)

New Delhi,
July 24, 2009.