

NON-REPORTABLE  
IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO.1175 OF 2018  
(Arising from SLP(Criminal) No. 5440/2017)

The State of Orissa ..Appellant  
Versus  
Mahimananda Mishra ..Respondent

WITH

CRIMINAL APPEAL NO.1176 OF 2018  
(Arising from SLP(Criminal) No.6006/2017)

Rajkishor Swain ..Appellant  
Versus  
State of Orissa and another ..Respondents

J U D G M E N T

MOHAN M. SHANTANAGOUDAR, J.

Leave granted in both the special leave petitions.

2. The two instant appeals have been preferred by the State of Orissa and the de-facto informant in FIR No. 180/2016, registered at Paradeep Police Station in Orissa State against the order dated 16.05.2017 of the High Court of Orissa at Cuttack, by which an application for bail filed by the respondent herein in connection with the aforementioned first information has been allowed.

3. The case of the prosecution in brief, as seen from the first information report and the other connected material, is that on 26.10.2016 at about 09:00 a.m. while the deceased Mahendra Swain was heading to his office in his vehicle accompanied by the driver and his security guard, two unknown assailants hurled bombs on the vehicle, and when the inmates of the vehicle tried to escape, they opened indiscriminate firing on the deceased, leading to his death. According to the first information, the murder was committed at the behest of certain people including the respondent herein namely Mahimananda Mishra. The incident was mainly on account of business rivalry between the

company of the deceased and the company of the respondent. The deceased was the Branch Manager of Seaways Shipping and Logistics Limited, Paradeep Branch. The respondent-accused is having a company, by name, Orissa Stevedores Limited. It has been alleged that the respondent had given death threats to the deceased directly and through the brother of the deceased.

4. During the course of investigation, the police found that the respondent went away to Thailand travelling via Chennai, Delhi and Nepal, before he could be arrested. Only after a Look Out Circular was issued, he was traced to Thailand and was deported therefrom to India, after which he was arrested.

5. During the course of investigation, the police have recovered certain weapons as well as the motorcycle used for commission of the murder. According to the State, the investigation records so far, *prima facie*, reveal that the respondent had paid certain amount of money as advance amount for commission of the murder. The State also relies upon a letter written by the deceased to the Inspector, Paradeep Police Station, stating that he fears for his life and the life of his family, inasmuch as the

respondent may make an attempt to take their life. According to the State, the said letter may be treated as a dying declaration of the deceased.

6. The police have filed a charge sheet against the respondent and others. However, four accused are absconding. Further investigation is being proceeded with with the permission of the Court.

7. Learned Advocates appearing on behalf of the State as well as the de-facto complainant, while taking us through the material on record, submit that the respondent is the kingpin of the conspiracy to murder the deceased and the murder has taken place as per his directions and plan. The preliminary charge sheet was filed for the offences punishable under Sections 302 and 120B of the Indian Penal Code, read with Sections 25(1)(B) and 27 of the Arms Act, as also under Sections 3 and 4 of the Explosive Substances Act. They further brought to the notice of the Court that the respondent, being a powerful and rich person, may go to any extent to influence the witnesses by intimidating them. The very fact that he discreetly went outside India to avoid

arrest would, *prima facie*, reveal that he is a person who can take the law into his hands. He may even abscond in the future, which may delay the process of justice. According to them, the witnesses are already frightened and consequently may not go before the Court to depose against the accused, in which event justice may suffer.

*Per contra*, Shri Ranjit Kumar, learned Senior Advocate appearing on behalf of the accused argued in support of the judgment of the High Court. He contended that though the respondent was released on bail in May 2018, absolutely no allegations are forthcoming by the police that the respondent has since tried to tamper with the evidence by intimidating the witnesses. There is also no allegation of abscondence against the respondent. Merely on apprehension of the police, without any *prima facie* proof, the liberty of the respondent cannot be curtailed. He further submitted that any additional condition may be imposed on the respondent by this Court.

8. It is brought to the notice of the Court by the learned Advocate for the State that though the impugned judgment of the

High Court of Orissa granting the order of bail in favour of the respondent was passed as far back as 16.05.2017, the respondent was actually released from custody with effect from May 2018, inasmuch as he was in custody in two other cases till then.

9. The High Court proceeded to grant bail to the respondent on the ground that there is no *prima facie* material against the respondent to establish his involvement in the conspiracy to murder the deceased, that the undated letter of the deceased addressed to the police showing apprehension to his life cannot be treated as a dying declaration; the material on record does not indicate any motive on the part of the respondent to conspire towards the commission of murder in question, and that the confessions of the co-accused cannot be made used of against the respondent at this stage, inasmuch as they are admissible only to the extent that they lead to recoveries under Section 27 of the Indian Evidence Act.

10. Since the investigation is yet to complete and trial is yet to begin, it would not be proper for us to dwell upon the subject

matter in detail at this stage, lest it may prejudice the case of either of the parties during trial. However, *prima facie*, it is brought on record by the State that there was severe animosity between the deceased and the respondent, as is evidenced by the fact that at one point an intervention by the district administration was necessitated to keep the peace. The statement of the family members of the deceased discloses that the respondent had given death threats to the deceased. A letter of the deceased was seized from the house of the deceased during the course of investigation which discloses that the deceased was under the apprehension of his death by the respondent due to business rivalry. The respondent fled to Thailand to avoid arrest and was arrested only on deportation pursuant to the issuance of a Look Out Circular, which probalilises the apprehension of the police regarding future attempts of the accused to escape. A recovery of weapon has been made pursuant to the statement made by the co-accused. The respondent has serious criminal antecedents, having five criminal cases registered against him, out of which two cases involve charges under Section 307, IPC

and three under the Explosive Substances Act. However, during the course of arguments, it was brought to the notice of the Court that in one matter, the respondent has been acquitted. Since the respondent is a powerful and influential person in his locality, the investigating officer apprehends that he may influence the witnesses by intimidating them and if the respondent continues to remain at large, his presence may influence the trial by creating fear in the minds of the witnesses.

11. It is common knowledge that generally direct evidence may not be available to prove conspiracy, inasmuch as the act of conspiracy takes place secretly. Only the conspirators would be knowing about the conspiracy. However, the Court, while evaluating the material, may rely upon other material which suggests conspiracy. Such material will be on record during the course of trial. However, at this stage, *prima facie*, the Court needs to take into consideration the overall material while considering the prayer for bail.

12. Though this Court may not ordinarily interfere with the orders of the High Court granting or rejecting bail to the accused,



it is open for this Court to set aside the order of the High Court, where it is apparent that the High Court has not exercised its discretion judiciously and in accordance with the basic principles governing the grant of bail. (See the judgment of this Court in the case of *Neeru Yadav vs. state of Uttar Pradesh*, (2014) 16 SCC 508 and *Prasanta Kumar Sarkar vs. Ashis Chatterjee*, (2010) 14 SCC 496). It is by now well settled that at the time of considering an application for bail, the Court must take into account certain factors such as the existence of a *prima facie* case against the accused, the gravity of the allegations, position and status of the accused, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of tampering with the witnesses and obstructing the Courts as well as the criminal antecedents of the accused. It is also well settled that the Court must not go into deep into merits of the matter while considering an application for bail. All that needs to be established from the record is the existence of a *prima facie* case against the accused. (See the judgment of this Court in the case of *Anil Kumar Yadav vs. State (NCT) of Delhi*, (2018) 12 SCC 129.)

13. Keeping in mind the aforementioned principles, we are of the view that the High Court was not justified in going into the evidence on record in such a depth which amounts to ascertaining the probability of the conviction of the accused. On the other hand, the High Court has failed to appreciate several crucial factors that indicate that it was highly inappropriate to grant bail in favour of the respondent.

14. Since the respondent is an influential person in his locality, in terms of both money and muscle power, there is a reasonable apprehension that he might tamper with or otherwise adversely influence the investigation, which is still going on qua some of the co-accused in the case, or that he might intimidate witnesses before or during the trial. The High Court in observing that there was no possibility of the respondent's absconding in light of his being a local businessman, not only completely overlooked his past attempt to evade the process of law, but also overlooked the implications of the clout enjoyed by him in the community.

15. Having regard to the totality of the facts and circumstances of the case and for the reasons mentioned supra, the impugned

judgment of the High Court granting an order of bail in favour of the respondent herein is liable to be set aside. Accordingly, the same is hereby set aside. The respondent Mahimananda Mishra, S/o Late Rabindranath Mishra, R/o Odia Bazar, P.S. Dargha Bazar, District Cuttack (Orissa), be taken into custody forthwith.

16. The instant appeals are accordingly allowed.

.....J.  
[L. NAGESWARA RAO]

NEW DELHI;  
SEPTEMBER 18, 2018.

.....J.  
[MOHAN M. SHANTANAGOUDAR]