

INDEX				
Sl. No.	Particular of Document	Page No.	Remarks	
		Part I	Part II	
(i)	(ii)	(iii)	(iv)	
1.	Office Report on Limitation	A	A	
2.	Listing proforma	A1- A2	A1- A2	
3.	Cover Page of Paper Book		A3	
4.	Index of Record of Proceeding		A4	
5.	Limitation Report		A5	
6.	Defect List		A6	
7.	Note Sheet		NS1 To	
8.	Synopsis /List of Dates	B - Q		

9.	Copy of the impugned common final order and judgment of Hon'ble High Court of Odisha at Cuttack dated 14.1.2020 in Misc. Case Nos. 327 of 2015 in CRLA No. 122 of 2015 and Misc. Case Nos. 331 of 2015 in CRLA No. 123 of 2015.			
10.	Special Leave Petition with Affidavit.			
11.	APPENDIX: Relevant portion of Indian Penal Code, 1860, and Arms Act, 1959.			
12.	Annexure P1: True copy of the FIR no. 29 of 2011 P.S. Kotagarh, District Kandhamal, Odisha u/s 120- B/121/121A/124/364/302/506/34 IPC r/w section 25/27 of Arms Act			

	r/w section 15/16 (1)(A)/18 UAPA, 1976 dated 5.8.2011.			
13.	Annexure P2: True copy of the charge sheet No.3 filed in FIR No 29 of 2011 P.S. Kotagarh, District Kandhamal, Odisha dated 2.2.2012.			
14.	Annexure P3: True copy of the deposition of P.W.1, Mr. ABC s/o DEF in S.T Case No 94/40 of 2013/2012 dated 28.11.2013.			
15.	Annexure P4: True copy of the deposition of P.W.9, Ms. ABC d/o DEF in S.T Case No 94/40 of 2013/2012 dated 17.06.2014.			
16.	Annexure P5: True copy of the deposition of D.W.1, Mr. ABC s/o DEF in S.T			

	Case No 94/40 of 2013/2012 dated 08.12.2014.			
17.	Annexure P6: True copy of the deposition of D.W.2, Mr.ABC in S.T Case No 94/40 of 2013/2012 dated 08.12.2014.			
18.	Annexure P7: True copy of the judgement passes by Ld. Additional Session Judge in S.T. Case No. 94/40 of 2013-2012 dated 31.1.2015.			
19.	Annexure P8: True copy of the order passed by this Hon'ble Court in SLP CrI. Nos. 6401-6402/2019, dated 22.7.2019.			
20.	Annexure P9: True copy of the order passed by this Hon'ble Court in SLP CrI. No. 5698 of 2019, dated 26.11.2019.			

21.	Application Seeking Exemption from filing official translation of Annexure P1 to P2.			
22.	Application Seeking Condonation of Delay in Filing the Special Leave Petition.			
23.	Application seeking exemption from filing surrender certificate.			
24.	Application seeking exemption from filing certified copy of the impugned order.			
25.	Application seeking exemption from filing notarised affidavit			
26.	F/M			
27.	Vakalatnama			
28.	Memo of Parties			

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
UNDER ARTICLE 136 OF CONSTITUTION OF INDIA
S.L.P. (CRIMINAL) NO. OF 2020

(Arising from impugned common final order and judgment of Hon'ble
High Court of Odisha at Cuttack dated 14.1.2020 in Misc. Case Nos. 327 of
2015 in CRLA No. 122 of 2015 and Misc. Case Nos. 331 of 2015 in CRLA
No. 123 of 2015)

(With Prayer for interim relief)

IN THE MATTER OF:

Radhika Mallick, etc

...Petitioner

Versus

State of Odisha

...Respondent

OFFICE REPORT ON LIMITATION

1. The petition is/are within time.
2. The petition is barred by time and there is delay of ____ days in filing the same against order dated 14.1.2020 and petition for condonation of ____ days delay has been filed.
3. There is delay of ____ days in refilling the petition and petition for condonation of days delay in refilling has been filed

BRANCH OFFICER

New Delhi

Dated:

PROFORMA FOR FIRST LISTING

SECTION _____

The case pertains to (Please tick/check the correct box):

- ☒ Central Act: (Title) _____
- ☒ Section(s): _____
- ☒ Central rule: (Title) N.A.
- ☒ Rule No.(s):
- ☒ State Act (Title)
- ☒ Section:
- ☒ State Rule: N.A.
- ☒ Rule No(s): Rule 9(13), Rule 12-A, Rule 13, Rule 14, Rule 14-A(d), Rule 14-B.
- ☒ Impugned Interim Order: (Date) N.A.
- ☒ Impugned Final Order/Decree: (Date) 14.1.2020
- ☒ High Court: (Name) High Court of Odisha at Cuttack
- ☒ Name of Judges: Hon'ble Mr Justice S.K. Mishra & Justice A.K. Mishra
- ☒ Tribunal/Authority: (Name) N.A.

1. Name of matter: ☐ Civil ☒ Criminal

2. (a) Petitioner/Appellant no. 1: XYZ

(b) E-mail ID:

(c) Mobile Phone Number:

3. (a) Respondent no. 1: State of Odisha

(b) E-mail ID: _____N.A._____

(c) Mobile Phone Number: _____N.A._____

4. (a) Main category classification: _____N.A._____

(b) Sub classification:

5. Not to be listed before: _____N.A._____

6. (a) Similar disposed of matter with citation, if any. & case details.
N.A.

(b) Similar pending matter with case details: N.A.

7. Criminal Matters:

a. Whether accused/convict has surrendered: N.A.

b. FIR No. 29/2011 Date: 5.8.2011

c. Police Station: Kotgarh

d. Sentence Awarded: Life imprisonment

e. Period of sentence Undergone including period of detention/custody
undergone: 9 years

8. Land Acquisition Matters:

(a) Date of Section 4 notification: _____N.A._____

(b) Date of Section 6 notification: _____N.A._____

(c) Date of Section 17 notification: _____N.A._____

9. Tax Matters: State the tax effect: _____N.A._____

10. Special Category (first petitioner/appellant only):

☐ Senior Citizen>65yrs; ☐ SC/ST; ☐ Woman/Child;

☐ Disabled; ☐ Legal Aid case; ☐ In custody

11. Vehicle Number (in case of Motor Accident Claim matters):

Date:

AOR for Petitioner(s)/Appellant(s)

Registration No.

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
UNDER ARTICLE 136 OF CONSTITUTION OF INDIA
S.L.P. (CRIMINAL) NO. OF 2020

(Arising from impugned common final order and judgment of Hon'ble
High Court of Odisha at Cuttack dated 14.1.2020 in Misc. Case Nos. 327 of
2015 in CRLA No. 122 of 2015 and Misc. Case Nos. 331 of 2015 in CRLA
No. 123 of 2015)

(With Prayer for interim relief)

IN THE MATTER OF:

Radhika Mallick, etc

...Petitioner

Versus

State of Odisha

...Respondent

PAPER BOOK
(For Index Kindly See Inside)

Cr.M.P._____of 2020: Application Seeking Exemption from filing
official translation of Annexure P1 to P2.

Cr.M.P._____of 2020: Application Seeking Condonation of Delay in
Filing the Special Leave Petition.

Cr.M.P._____of 2020: Application seeking exemption from filing
surrender certificate.

Cr.M.P._____of 2020: Application seeking exemption from filing
certified copy of the impugned order.

Cr.M.P._____of 2020: Application seeking exemption from filing
notorised affidavit

Filed on:

ADVOCATE FOR PETITIONER:

Index of Record of Proceedings

Synopsis

1. The present petition impugns the order dated 14.1.2020 passed by the Hon'ble High Court of Odisha at Cuttack in Misc. Case No.327 and Misc. Case No. 331 of 2015 in CRLA Nos. 122 and 123 of 2015, wherein the Misc. applications were dismissed.

Facts

2. On 5.8.2011, the complainant, XYZ made a complaint stating that on 4.8.2011 at about 7 pm, while he and his other family members were present in his house, about 10 male and 8 female persons arrived at his house in Mao dress holding guns and forcibly abducted his son, ABC. The complainant further stated that XYZ's, all residents of village Matikeda were amongst the persons who came to his house on the said day. On the next day i.e., on 5.8.2011, the complainant went in search of his son and found the bullet ridden dead body of ABC near Jabaguda Church. He also noticed the dead body of one XYZ lying near the dead body of his son. The complainant suspected the involvement of Maoists in the murder of his son.
3. On the basis of above complaint, an FIR No. 29/2011 dated 5.8.11 P.S. Kotagada u/s 120-B/121/121-A/124/364/302/506/34 IPC r/w section

25/27 of Arms Act r/w section 15/16 (1)(A)/18 UAPA, 1976 was lodged, the relevant parts of which is as under:

“...on 4.8.2011 evening at about 7:00 PM 10 male and 8 female Maoists wearing Maoist dresses with guns came to our house and forcibly took my Son XYZ and when I and my daughter ABC protested, they threatened to shoot us. Out of them, I and my daughter recognised XYZ’s who belong from village Matikeda. My son did not return at night therefore in the morning I and my daughter XYZ along with co-villagers namely ABC and XYZ went to search him but heard that the Maoists have killed my son by firing and left his body near Jubaguda Mission on the Kuchimila Road. On hearing this, we went to the spot and found the dead body of my son on the road and near it we also found a hand written letter of the Convenor of CPI Maoist of Bansdhara Divisional Committee, ABC and one bullet shell. In that letter, it was written that since my son, serving as Home-guard was in contact with the Police and acting against Maoists, and that he was given the Capital Punishment and the home-guards and SPOs

were threatened that if do this type of work, they will be given the same capital punishment. After receiving the news of death of my son, I also saw the dead body of XYZ, lying there who was the Samiti member of Jubaguda. XYZ's and others Maoists in order to create fear in the mind of public and to destabilize the Government, kidnapped and killed my son."

4. On 8.8.2011, petitioners were arrested.
5. On 31.1.2015, judgement was passed by the Ld. Additional Sessions Judge, Phulbani, thereby convicting 3 people out of 8 who faced trial.

Unreliable key witnesses

6. The entire case of the prosecution is based upon two eye witnesses PW1, ABC, the father of the deceased and PW9, XYZ, the sister of the deceased who claims to have seen the petitioners and other co-accused abduct the deceased. After a bare perusal of the evidence on record, it is clearly made out that both the eye witnesses have proved to be unreliable and fabricated. Their testimonies are analyzed herein below.

Contradictions in the statements, deleted and added names

7. On 28.11.2013, the complainant, PW1 deposed before the Court, the relevant parts of which is as under:

“...The accused persons namely XYZ’s came to my house and removed my son ABC after tying him... Those persons never covered their face by any mask... The accused persons namely XYZ’s are from village Matigada”

8. It may be recalled that in the FIR, the complainant named 5 persons namely XYZ’s, all resident of village Matikeda, however, in the deposition, PW1 has deleted names of ABC and has further added new names like XYZ.

9. On 17.6.2014, PW9, the sister of the deceased deposed before the Court, the relevant parts of which is as under:

“3. The accused persons namely XYZ’s came to my house at the relevant time wearing Maoists dresses and forcibly removed my brother ABC. The accused persons

kidnapped my brother with the apprehension that he has got relationship with local police...

5. ...It is a fact that for last one year we are working at Chandrapur and staying at ABC house... There is no electricity at our village. It was dark evening at the time of incident...

6. ... Normally the village meeting was held during first week once a month to maintain harmony at the village. Normally my father attends the meeting. The meeting was normally held during evening hours. The meeting normally concludes at 8.30 or 9 p.m.”

10. It may be recalled that PW9 also deleted the names of XYZ's which were named in the FIR and added new names like ABC's. Therefore, both the key witnesses of the prosecution have made contrary statements with respect to the persons who had come to their house in the evening of 4.8.2011 and abducted the deceased.

Defense witnesses stated that PW1 and PW9 were never present at their house in the evening of 4.8.11

11. Further to substantiate the argument that PW1 and PW9 are unreliable witnesses and fabricated witnesses, attention is drawn to the defense witnesses DW1 and DW2.

12. On 8.12.2014, DW1, ABC, a person from the village Jubaguda deposed before the Court, the relevant of which is as under:

“2. On 05.08.2011 at about 7.30 am. I along with my co-villagers visited the house of DEF at village Murenjabali and informed him about the death of ABC. Later I informed the daughter of XYZ who was staying at Chandrapur about the incident over telephone. On that day at about 4 p.m. ABC came to Jubaguda.”

13. On 8.12.2014, DW2, DEF a priest at Believers Church, Jubagada deposed before the Court, the relevant parts of which is as under:

“2. On 05.08.2011 I informed XYZ to inform ABC about death of DEF. ABC came to Jubaguda at about 4 p.m. On

the evening of 04.08.2011 there was a meeting at our village in which persons from the entire Panchayat attended. The informant was also present in the meeting. The Panchayat was summoned by the Gram Panchayat, Jubaguda. I was present in the meeting. The meeting was concluded at about 10 p.m.”

14. The Trial Court failed to consider the evidence of DW1 & DW2, who clearly stated that on the evening of 4.8.2011, the complainant attended the village meeting which lasted till 10 pm. Further, the evidence clearly points out that PW9, the sister of the deceased and a key eye witness was never present in the village on the date of the incident but was informed the next day only after which she came back to her village.
15. Further, DW2 is a priest at Believers Church, Jubagada, having a good reputation and standing before the Christian community including the complainant who belongs from the same community, therefore DW2 is a reliable witness but his statement was completely ignored by the Trial Court.

16. It is also relevant to mention that the deceased had proposed a marriage to the petitioner no.1, which the petitioner no.1 refused.
17. Therefore, after perusal of the evidence stated above, the two key eye witnesses have proved to be unreliable and they have fabricated the case only to satisfy their personal differences with the accused. Once these two eye witnesses have been proved to be unreliable and fabricated, the entire case of prosecution fails.

Only 3 convicted out 8 who faced trial

18. There were 8 people who faced trial, however, only 3 (petitioners) were convicted. Rest of the accused were acquitted holding that PW1 and PW9 are not reliable and truthful witnesses, the relevant parts of observation made by the Trial Court in this respect in judgment dated 31.1.2015 is as under:

“13. ... I have carefully gone through the entire evidence. The evidence with regard to involvement of XYZ's is not at all clear. It is not known as to why the informant who categorically named others but failed to name them in the FIR. There is also contradiction in the evidence of P.W.9

with regard to involvement of XYZ's. I failed to appreciate the submissions by learned Addl. P.P. that the above error in the prosecution case is due to normal error of observation. There is absolutely no corroborating evidence to connect the above two accused persons in the offence..."

19. Therefore, once the Trial Court accepted the contradiction in the evidence of PW1 and PW9 with respect to involvement of XYZ's, then the Trial Court ought not to have heavily relied on their statements to convict the petitioners. This shows the complete non-application of mind by the Trial court.

Motive: Maoist theory of the prosecution

20. It is the case of the prosecution that the deceased was murdered by Maoists as they suspected him of being a police informant. This is said to be the main motive behind the murder. However, the prosecution failed to link the Maoists to the petitioners. The Maoist leaflet claimed to be found near the dead bodies were never produced and examined by the prosecution, the observation of the Trial Court in this respect is as under:

“14. It is a fact that there has been some glaring defects in the investigation. The investigating officer P.W.13 who seized the wearing apparels of the victim, blood stained earth, empty cartridge and the Mao leaflet vide Ext.1 and 3, did not choose for examination the said articles by forensic expert or produce the same before the Court.”

21. Further, neither a gun nor a Maoist uniform alleged to have been seen by the complainant was recovered from the petitioners, the observation of the Trial Court in this regard is as under:

“14. ...It is a fact that the investigating officer never seized the weapon of offence i.e. the gun...”

22. Another major defect in the investigation is that there was a delay of 3 days in submitting the FIR to the Court. The FIR was filed on 5.8.2011, however, it was only submitted to the Court on 8.8.2011. No reason was given for such a delay, casting a doubt on the genuineness of the contents of the FIR.

23. Further, the petitioners have been in judicial custody from past 9 years without parole, their behavior is good and no complaint has been received from anyone. The appeal is pending in High Court from past 5 years and has not been heard.

24. In *Bijaya Kumar Sanaseth V. State of Odisha*, SLP (Crl) No. 6401/2019, this Hon Cour held as under:

“Considering the fact that the accused-appellant (ABC S/o XYZ) had already undergone ten years of his sentence and taking an over-all view of the matter, we are of the opinion that the above-named accused appellant should be released on bail on such conditions as may be imposed by the learned Additional Sessions Judge, Phulbani in S.T. No.16/18 of 2013-2009. We order accordingly.

25. In *Munda Badamanji V. State of Odisha*, SLP(Crl) No. 5698/2019, this Hon Court held as under:

Considering the fact that the accused-appellant(s) had already undergone ten years of their sentence as is the case of other accused directed to be released on bail and taking an overall view of the matter, we are of the opinion

that the above-named accused ppellant(s) should also be released on bail on such conditions as may be imposed by the learned Additional Sessions Judge, Phulbani in S.T. No. 16/18 of 2013-2009.”

List of Dates and Events

Dates	Events
4.8.2011	At about 7 pm, about 18 persons (10 males and 8 females) entered the house of complainant, ABC and forcibly took away her son XYZ
5.8.2011	The complainant lodged an FIR No. 29 P.S. Kotagada, District Kotagarh, Odhisa, u/s 120-B/121/121-A/124/364/302/506/34 IPC r/w section 25/27 of Arms Act r/w section 15/16 (1)(A)/18 UAPA, 1976 dated 5.8.2011. True copy of the FIR no. 29 of 2011, P.S. Kotagarh, District Kandhamal, Odisha u/s 120-B/121/121A/124/364/302/506/34 IPC r/w section 25/27 of Arms Act r/w section 15/16 (1)(A)/18 UAPA, 1976 dated 5.8.2011.is annexed herewith as Annexure P1 at page 26 to 30.
8.8.2011	The petitioners were arrested in FIR No. 29 P.S. Kotagada dated 5.8.2011.

2.2.2012	Charge sheet No. 3 was filed in the Court of S.D.J.M, Baliguda u/s 364/302/506/34 IPC dated 2.2.2012, was submitted against the petitioners. True copy of the charge sheet No.3 filed in FIR No 29 of 2011 P.S. Kotagarh, District Kandhamal, Odisha dated 2.2.2012 is annexed herewith as Annexure P2, at page 31 to 120.
4.11.2013	Charges were framed for commission of offences u/s 121/121-A/124-A/364/506/120-B/34 IPC r/w section 25(1-B)(a) 27 Arms Act r/w section 16(1)(a)/18/39 Unlawful Activities Prevention Act.
28.11.2013	P.W.1, ABC s/o DEF, deposited before the Court in S.T Case No. 94/40 of 2013/2012. True copy of the deposition dated 28.11.2013, of P.W.1, Mr. XYZ s/o AAA in S.T Case No 94/40 of 2013/2012 is annexed herewith as Annexure P3 at page 121 to 123.
17.6.2014	P.W.9, BBB d/o AAA, deposited before the Court in ST Case No 94/40 of 2013/2012. True copy of the deposition dated 17.06.2014, of P.W.9, Ms. DDD d/o AAA in S.T Case No 94/40 of 2013/2012 is annexed as Annexure P4 at page 124 to 128.
8.12.2014	D.W.1, PQR s/o STU, deposited before the Court in ST Case No. 94/40 of 2013/2012. True copy of the deposition dated 08.12.2014, of D.W.1, ABC s/o DEF in S.T Case No 94/40

	of 2013/2012 is annexed herewith as Annexure P5 at page 129 to 130.
8.12.2014	D.W.2, AAA, deposed before the Court in ST Case No. 94/40 of 2013/2012. True copy of the deposition dated 08.12.2014, of D.W.2, Mr. BBB in S.T Case No 94/40 of 2013/2012 is annexed as Annexure P6 at page 131 to 132.
31.1.2015	Judgement was passed in S.T Case No. 94/40 of 2013-12 by Ld. Additional Sessions Judge, Phulbani, thereby convicting the petitioners for life u/s 302/364/34 IPC and section 27(1) Arms Act. True copy of the judgement passed by Ld. Additional Session Judge in S.T. Case No. 94/40 of 2013-2012 dated 31.1.2015 is annexed herewith as Annexure P-7 at page 133 to 180.
3.3.2015	An appeal bearing CRLA No.122/2015 was filed in the Hon High Court of Cuttack against the judgement dated 31.1.2015 in S.T Case No. 94/40 of 2013-12.
22.7.2019	This Hon'ble Court in SLP CrI. Nos. 6401-6402/2019, passed the order considering the fact that the accused-appellant had already undergone ten years of his sentence and directed the accused to be released on bail on such condition as may be imposed by the learned Additional Session Judge, Phulbani in S.T. No. 16/18 of 2013-2009. True copy of the order passed by this Hon'ble Court in SLP CrI. Nos. 6401-

	6402/2019, dated 22.7.2019, is annexed herewith as Annexure P-8 at page 181 to 183.
26.11.2019	This Hon'ble Court in SLP CrI. No. 5698 of 2019, passed an order considering the fact that the accused-appellant had already undergone ten years of their sentence and directed the accused to be released on bail on such condition as may be imposed by the learned Additional Session Judge, Phulbani in S.T. No. 16/18 of 2013-2009. True copy of the order passed by this Hon'ble Court in SLP CrI. No. 5698 of 2019, dated 26.11.2019, is annexed herewith as Annexure P-9 at page 184 to 187.
14.1.2020	Impugned order was passed dismissing the bail in Misc. Case No.327 of 2015 in CRLA No.122/2015.

IN THE HIGH COURT OF ORISSA: CUTTACK
CRLA NO. 122 OF 2015

Code No.090200

In the matter of :

An Appeal U/s. 374 (2) of the Code of Criminal Procedure,
1973;

AND

In the matter of:

An appeal against judgment and sentence dated 31.01.2015
passed in ST Case No. 94/40 of 2013-12 by the Ld.
Additional Sessions Judge, Phulbani;

AND

In the matter of:

AAA, aged about 22 years, D/o. XYZ of Village-ABC, P.S.
XXX.

....Appellants

Vs.

State of Odisha

.... Respondent

Sl No. of order	Date of order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
11.	14.01.2020	<p>Misc. case Nos.327 and 331 of 2015 (Arising out of CRLA Nos. 122 and 123 of 2015)</p> <p>Heard the learned counsel for the appellants /petitioners and the learned Additional Government Advocate.</p> <p>Misc. Case No.327 of 2015 has been filed by the appellant- ABC in CRLA No. 122 of 2015 and Misc. Case No.331 of 2015 has been filed by the appellants XXX and YYY @ ZZZ in CRLA No. 123 of 2015 under Section 389 of the Cr.P.C. for grant of bail upon appeal.</p> <p>The appellants/petitioners in both the aforesaid appeals have been convicted and sentenced to undergo imprisonment for life</p>	

		<p>and to pay a fine of Rs.10,000/- each, in default, to undergo R.I. for two months each under Section 302/34 of the I.P.C. and to undergo R.I. for life and to pay a fine of Rs. 10,000/- each, in default, to undergo R.I. for two months each under Section 364/34 of the I.P.C. and to undergo R.I. for three years and to pay a fine of Rs.2,000/- each, in default, to undergo R.I. for fifteen days each under Section 27(1) of the Arms Act vide the judgment of conviction and order of sentence dated 31st January, 2015 passed by the learned Additional Sessions Judge, Phulbani in S.T. Case No.94/40 of 2013-2012.</p> <p>From the narration of P.Ws.1 and 9, it is apparent that the deceased was taken by armed left wing terrorists from his house and on the next day the dead body of the deceased was found near the Church and some injuries were on his chest.</p> <p>Prima facie it is apparent that there is hardly any scope for interference in the aforesaid impugned judgment of conviction and order of sentence.</p>	
--	--	--	--

		<p>Accordingly, we are not inclined to grant bail to the appellants / petitioners.</p> <p>Hence, both the Misc. Cases filed by the Petitioners / appellants in both the aforesaid appeals are rejected.</p> <p>Sd/- Mr. S.K. Mishra, J.</p> <p>Sd/- Dr. A.K. Mishra, J.</p>	
12.	14.01.2020	<p><u>CRLA Nos. 122 and 123 of 2015</u></p> <p>Both the appeals be listed after preparation of the paper books for final disposal.</p> <p>Sd/- Mr. S.K. Mishra, J.</p> <p>Sd/- Dr. A.K. Mishra, J.</p>	

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
UNDER ARTICLE 136 OF CONSTITUTION OF INDIA

S.L.P. (CRIMINAL) NO. OF 2020

(Arising from impugned common final order and judgment of Hon'ble High
Court of Odisha at Cuttack dated 14.1.2020 in Misc. Case Nos. 327 of 2015 in
CRLA No. 122 of 2015)

(With Prayer for interim relief)

IN THE MATTER OF:

Sl. No	<u>BETWEEN</u>	POSITION OF PARTIES		
		In the Trial Court	In the High Court	In this Court
1.	AAA D/o BBB Vill. XYZ, P.S. PQR District- YYY	Accused No. 4	Petitioner	Petitioner No. 1

Versus

State of Odisha Through Station House Officer P.S. Kotagarh District- Kandhamal, Odisha	Responding No. 1	Contesting Respondent No. 1
--	---------------------	-----------------------------------

(Arising from impugned common final order and judgment of Hon'ble High Court of Odisha at Cuttack dated 14.1.2020 in Misc. Case Nos. 331 of 2015 in CRLA No. 123 of 2015)

IN THE MATTER OF:

Sl. No	<u>BETWEEN</u>	POSITION OF PARTIES		
		In the Trial Court	In the High Court	In this Court
1.	BBB S/o XYZ Vill. ABC, P.S. YYY District- DEF	Accused No. 1	Petitioner No. 1	Petitioner No. 2
2.	CCC S/o XYZ Vill. AAA, P.S. ABC District- BBB	Accused No. 2	Appellant No. 2	Petitioner No. 3

Versus

State of Odisha Through Station House Officer P.S. Kotagarh District- Kandhamal, Odisha	Responding No. 1	Contesting Respondent No. 1
--	---------------------	-----------------------------------

To

Hon. The Chief Justice of India and

His Companion Justices of the Supreme Court of India

Humble petition of the Petitioners most respectfully sheweth:

1. The instant petition is being filed against the impugned common final order and judgment dated 14.1.2020 passed by the Hon'ble High Court of Odisha at Cuttack dated 14.1.2020 in Misc. Case Nos. 327 of 2015 in CRLA No. 122 of 2015 and Misc. Case Nos. 331 of 2015 in CRLA No. 123 of 2015, wherein the Misc. applications were dismissed.

IA No Writ Appeal or LPA lies against the impugned orders/judgment for which the present SLP is filed.

2. Question of Law:

The petitioner states that following question of law arise for consideration of this Hon'ble Court:

- A. Whether the deposition of eyewitnesses should be heavily relied on for conviction when the same eyewitnesses have been found to be unreliable or unworthy of credits?

B. Whether the accused can be convicted when the prosecution failed to establish the motive of the crime to the accused?

C. Whether the Trial Court made an error in not taking into consideration the deposition of the defense witness?

3. Declaration in terms of Rule 2 (2)

The Petitioner states that no other petition seeking Special Leave to Appeal against the impugned final order and judgment of Hon'ble High Court of Odisha at Cuttack dated 14.1.2020 passed by the Hon'ble High Court of Odisha at Cuttack dated 14.1.2020 in Misc. Case Nos. 327 of 2015 in CRLA No. 122 of 2015 and Misc. Case Nos. 331 of 2015 in CRLA No. 123 of 2015.

4. Declaration in terms of Rule (4):

That the Annexures P/1 to P/9 along with the Special Leave Petition are correct and the true copies of the pleadings / documents which form part of the record of the case in the court below against whose order, the leave to appeal is sought for in the writ petition.

5. Grounds:

That the leave to appeal is sought for on the following amongst the other;

- A. Because this Hon. Court has ignored the material infirmities, discrepancies and contradictions in the prosecution case while appreciating the evidence, as such the impugned judgement and order is wholly illegal and liable to be set aside.
- B. Because the Hon. Court has failed to appreciate that the key witness of the prosecution have made contrary statement, with respect to the person who had come to their house in the evening of 4.8.2011.
- C. Because the Hon. Court has wrongly accepted the unsustainable and implausible statement of ABC (P.W.1) and DEF (P.W.9), wherein they have name five persons namely ABC, DEF, XYZ, AAA and YYY on the First Information Report but later in their deposition, they delete the name of XYZ and ABC and later added new name which are Andriya and Ludra. Given the fact that all of the accused belong from the same village and were known by the complainants, they should not have faced any difficulties in identifying them correctly.
- D. Because the Hon. Court failed to notice that as per the deposition of DEF (P.W.9), there was no electricity at their village and it was dark in the evening at the time of incident. So it will be hard to identifying the

accused but she have clearly mention the name of the accused without any reasonable doubt.

- E. Because the Hon. Court did not consider the statement of ABC (D.W.1) and DEF (D.W.2) who deposed that XYZ (P.W.1) attended the village meeting dated 04.08.2011 which lasted till 10 p.m. and the sister of the deceased was never present in the village on the date of the incident. D.W.1 has also stated that he has informed DEF (P.W.9) who was staying at Chandrapur about the incident over the telephone and late she arrives at the village around 4 p.m.
- F. Because the Hon. Court did not consider that the prosecution failed to prove by any cogent evidence to link the Maoists to the petitioners. The Maoist leaflet claimed to be found near the dead bodies were never produced and examined by the prosecution. Neither a gun nor a Maoist uniform alleged to have seen by the complainant was recovered from the petitioner.
- G. Because the Hon. Court failed to notice the delay in filing the FIR and delay in its submission to the court, non-examination of the scribe of FIR raises a serious doubt about the genuineness of prosecution case.

H. Because the Hon. Court failed to considered that the Investigation in the case is biased, tainted and conducted with utter disregard to the procedure laid down by law. It is writ large that the appellants were not accorded fair trial on account of the conduct of the investigation/prosecution.

aa. Because there is no other efficacious remedy available to the petitioners than to approach this Hon'ble Court.

bb. Because the petitioner has not filed any other petition seeking similar relief impugning the order, which is subject matter of this petition.

6. Grounds for Interim relief:

a) Because the petitioners belongs to the economically weaker sections of the society and has a family to take care of who are finding it difficult to sustain themselves in the absence of the petitioner.

b) Because the Petitioner has been in the Judicial custody for more than 9 years without parole.

7. Main Prayer:

In the facts and circumstances aforesaid, the petitioners most respectfully prays that this Hon'ble Court may be graciously pleased to:-

- a) Grant Special Leave to Appeal against the impugned final order and judgement of Hon'ble High Court of Odisha at Cuttack dated 14.1.2020 passed by the Hon'ble High Court of Odisha at Cuttack dated 14.1.2020 in Misc. Case Nos. 327 of 2015 in CRLA No. 122 of 2015 and Misc. Case Nos. 331 of 2015 in CRLA No. 123 of 2015.
- b) Pass any such further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

8. Interim prayer:

- a) For an order granting the petitioners an interim bail to the satisfaction of the Hon. Trial Court in S.T. Case No. 94/40 of 2013-2012 till the final decision of the present petition;
- b) Pass any such further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

And for this act of kindness, the petitioner shall ever be pray

Drawn by:

Filed on:

Filed by:

(Advocate for the Petitioner)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
UNDER ARTICLE 136 OF CONSTITUTION OF INDIA
S.L.P. (CRIMINAL) NO. OF 2020

(Arising from impugned common final order and judgment of Hon'ble High Court of Odisha at Cuttack dated 14.1.2020 in Misc. Case Nos. 327 of 2015 in CRLA No. 122 of 2015 and Misc. Case Nos. 331 of 2015 in CRLA No. 123 of 2015)

(With Prayer for interim relief)

IN THE MATTER OF:

Radhika Mallick, etc

...Petitioner

Versus

State of Odisha

...Respondent

CERTIFICATE

I hereby certify that the S.L.P. is prepared only on the pleadings before the Court whose order is challenged and other documents relied upon in the proceedings. It is further certified that the copies of the documents/Annexures attached to the S.L.P. are necessary to answer the question of law raised in the petition or to make out a ground urged in the S.L.P. for consideration of this Hon'ble Court. No additional documents are adduced and no additional grounds are urged which were not filed in the Court below. This certificate is given on the basis of the instructions given by the petitioners/persons authorized by the petitioner whose affidavit is filed in support of the S.L.P.

New Delhi

Date :

(Advocate for the Petitioners)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
UNDER ARTICLE 136 OF CONSTITUTION OF INDIA
S.L.P. (CRIMINAL) NO. OF 2020

(Arising from impugned common final order and judgment of Hon'ble High Court of Odisha at Cuttack dated 14.1.2020 in Misc. Case Nos. 327 of 2015 in CRLA No. 122 of 2015 and Misc. Case Nos. 331 of 2015 in CRLA No. 123 of 2015)

(With Prayer for interim relief)

IN THE MATTER OF:

Radhika Mallick, etc

...Petitioner

Versus

State of Odisha

...Respondent

Affidavit

I, XYZ m/o ABC, aged about XX years, R/o XYZ, P.S. DEF, Dist. AAA, do, hereby, solemnly affirm and declare as under:

1. That I am the periokar father of the petitioner no.1 in the abovementioned petition and I am well conversant with the facts and circumstances of this case, hence, am competent to swear this affidavit.
2. That I have read and understood the contents of the accompanying Special Leave Petition (Pages 5 to 12), Paragraphs 1 to 8, statement of dates and facts and Interlocutory Application (S) as shown to me and have been explained to me in vernacular, and the contents thereof are true to the best of my knowledge and belief and nothing material has been concealed thereof.

3. I state that the facts and submissions made therein are based on legal advice received from my counsel and believed to be true and correct.
4. That the Annexures to the Special Leave Petition are true and correct copies of the respective originals.
5. That the Petitioner has not filed any other or similar application before this Hon'ble Court.

DEPONENT

VERIFICATION

Verified at New Delhi on this the day of August, 2020 that the contents of Para 1 to 5 of the above Affidavit are true and correct to my knowledge and belief, that no part of it is false and that nothing material has been concealed there from.

DEPONENT

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
UNDER ARTICLE 136 OF CONSTITUTION OF INDIA
S.L.P. (CRIMINAL) NO. OF 2020

(Arising from impugned common final order and judgment of Hon'ble High Court of Odisha at Cuttack dated 14.1.2020 in Misc. Case Nos. 327 of 2015 in CRLA No. 122 of 2015 and Misc. Case Nos. 331 of 2015 in CRLA No. 123 of 2015)

(With Prayer for interim relief)

IN THE MATTER OF:

Radhika Mallick, etc

...Petitioner

Versus

State of Odisha

...Respondent

Affidavit

I, AAA m/o BBB, aged about XX years, R/o XYZ, P.S. ABC, Dist. DEF, periokar, do, hereby, solemnly affirm and declare as under:

1. That I am the periokar father of the petitioner no.2 in the abovementioned petition and I am well conversant with the facts and circumstances of this case, hence, am competent to swear this affidavit.
2. That I have read and understood the contents of the accompanying Special Leave Petition (Pages 5 to 12), Paragraphs 1 to 8 statement of dates and facts and Interlocutory Application (S) as shown to me and have been explained to me in vernacular, and the contents thereof are true to the best of my knowledge and belief and nothing material has been concealed thereof.

3. I state that the facts and submissions made therein are based on legal advice received from my counsel and believed to be true and correct.
4. That the Annexures to the Special Leave Petition are true and correct copies of the respective originals.
5. That the Petitioner has not filed any other or similar application before this Hon'ble Court.

DEPONENT

VERIFICATION

Verified at New Delhi on this the day of August, 2020 that the contents of Para 1 to 5 of the above Affidavit are true and correct to my knowledge and belief, that no part of it is false and that nothing material has been concealed there from.

DEPONENT

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
UNDER ARTICLE 136 OF CONSTITUTION OF INDIA
S.L.P. (CRIMINAL) NO. OF 2020

(Arising from impugned common final order and judgment of Hon'ble High Court of Odisha at Cuttack dated 14.1.2020 in Misc. Case Nos. 327 of 2015 in CRLA No. 122 of 2015 and Misc. Case Nos. 331 of 2015 in CRLA No. 123 of 2015)

(With Prayer for interim relief)

IN THE MATTER OF:

Radhika Mallick, etc

...Petitioner

Versus

State of Odisha

...Respondent

Affidavit

I, XYZ w/o ABC, aged about XX years, R/o YYY, P.S. ZZZ, Dist. DEF, do, hereby, solemnly affirm and declare as under:

1. That I am the periokar wife of the petitioner no.3 in the abovementioned petition and I am well conversant with the facts and circumstances of this case, hence, am competent to swear this affidavit.
2. That I have read and understood the contents of the accompanying Special Leave Petition (Pages 5 to 12), Paragraphs 1 to 8 statement of dates and facts and Interlocutory Application (S) as shown to me and have been explained to me in vernacular, and the contents thereof are true to the best of my knowledge and belief and nothing material has been concealed thereof.

3. I state that the facts and submissions made therein are based on legal advice received from my counsel and believed to be true and correct.
4. That the Annexures to the Special Leave Petition are true and correct copies of the respective originals.
5. That the Petitioner has not filed any other or similar application before this Hon'ble Court.

DEPONENT

VERIFICATION

Verified at New Delhi on this the day of August, 2020 that the contents of Para 1 to 5 of the above Affidavit are true and correct to my knowledge and belief, that no part of it is false and that nothing material has been concealed there from.

DEPONENT