

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 3662 of 2022

Shakti Singh **Petitioner**
Mr. S. Das (A), Advocate
- Versus -
State of Odisha **Opposite Party**
Mr. S. Mishra, Addl. Standing Counsel

CORAM:
JUSTICE SASHIKANTA MISHRA

ORDER
26.07.2022

Order No.
6.

1. This matter is taken up through hybrid mode.
2. As directed, learned District & Sessions Judge, Keonjhar has conducted an enquiry as to how the case diary could be made available to the accused so that he could enclose it to the bail application as Annexure-3. Learned District Judge, in his report dated 18.07.2022 has informed that he enquired from the court of learned J.M.F.C, Barbail as also learned Additional District & Sessions Judge, Champua, who have dealt with the case at different periods of time. Basing on the inputs provided by learned J.M.F.C, Barbil and learned Addl. District & Sessions Judge, Champua, learned District Judge has arrived at the conclusion that the copies of the case diary enclosed to the bail application have not been taken from the office and court of learned J.M.F.C., Barbil and learned Addl. District and Sessions Judge, Champua. Further, the source of receipt of copy of the case diary, according to learned District Judge, must be from the CSI office of Champua or from Rugudi

Police Station. After carefully perusing the report of the learned District Judge this Court finds no reason to disagree with the same. The report is therefore, accepted.

3. As has already been observed in order dated 21.06.2022 by this Court, in view of the bar under Section 172 Cr.P.C., the accused has no right of access to the case diary.

4. The matter therefore needs to be viewed with all seriousness by all concerned, not only by the concerned courts but also the office of the Court Sub-Inspector and the concerned Investigating Officer under whose custody the case diary is supposed to be kept. While the Code of Criminal Procedure provides that the accused is entitled to a fair trial, the same does not mean that the accused can be given an unfair advantage contrary to the provisions of the Code.

5. Further, it is a case where not only was the case diary accessed, but also copies thereof obtained and enclosed to the bail application before the High Court with impunity.

6. This Court is therefore, of the view that all the courts must be conscious of the entitlement and disentitlement of the accused to the records of the investigating agency/prosecution pertaining to the case and so also the concerned police personnel in charge of the same. This Court, therefore, directs the Registrar (Judicial) to place the matter before the Court in the administrative side for issuing appropriate instructions to the sub-ordinate courts. Further, this Court directs the Director General of Police to take note of the matter and to issue

necessary instructions to all concerned so as to ensure that the provision under Section 172 of Cr.P.C. is adhered to in letter and spirit by the concerned Police Officers. Action taken by the DG in this regard be intimated to this Court.

7. List this matter on 22nd August, 2022.

(Sashikanta Mishra)
Judge

A.K. Rana

