

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL NO.77 OF 2020

Bharat @ Bharat Behera @ Litua ***Petitioner***
Mr. A. Mishra, Advocate

-versus-

State of Odisha ***Opposite Party***
Mr. S.K. Nayak, AGA.

CORAM:
MR. JUSTICE D.DASH

ORDER
11.10.2022

Order No.

05. 1. The matter is taken up through hybrid arrangement (virtual/physical) mode.
2. This is the second journey of the Petitioner who is in custody in connection with Chauliaganj P.S. Case No.29 of 2016 corresponding to G.R. Case No.228(A) of 2016 pending on the file of learned Sessions Judge, Cuttack, for alleged commission of offence under Section -364/302/120-(B)/201/34 of the IPC read with Section-25(1-B)(a)/25(1-AA)/27 of the Arms Act, in filling this application under section 439, Cr.P.C. for reconsideration of his prayer for grant of bail to the Petitioner in the above mentioned case.
3. Learned Counsel for the Petitioner submits that despite long period of detention of the Petitioner in custody, the trial of the case is not yet complete and the prosecution although has brought the Investigating Officer to the witness box for his examination, other left out prosecution witnesses have not been declined from their examination. He submits that under the

circumstance, it is not the case here that the recording of the evidence of the Investigating Officer will close the prosecution evidence. He submits that for the said reason, the application having been filed by the Petitioner, the Trial Court has deferred further examination of the Investigating Officer. It is also submitted that now one co-accused Nirmal Rout has been granted bail by the order of the Hon'ble Apex Court. In view of all these above; he prays for reconsideration of the prayer for grant of bail to the Petitioner as according to him, there remains no scope on his part to flee from justice and tamper the evidence.

4. Learned Counsel for the State opposes the move. According to him, the Petitioner although is in custody for a long period yet the prosecution cannot be solely blamed for the delay in completion of the trial. He however, submits that this Petitioner having last moved the Trial Court on 23.12.2019 as in the meantime some important witnesses have been examined and part evidence of the I.O. has been made when other developments as to grant of bail to co-accused has also taken place; in the fitness of things, the Petitioner should move the Trial Court afresh citing all such developments for being taken into account in their proper perspective.

5. Considering the submissions made and on going through record, it is seen that the Petitioner had last moved the Trial Court on 23.12.2019 for his release on bail and the evidence of the witnesses have been recorded thereafter when it is submitted on at the Bar that in the meantime, co-accused

even standing at a higher footing than the Petitioner has been released on bail.

In the above state of affairs, this Court feels inclined to dispose of this application granting liberty to the Petitioner to move the Trial Court afresh for his release on bail citing all such developments which have taken place in the meantime for being taken into consideration in their proper perspective.

It is further observed that in case such a move is made, the Trial Court would do well to consider the matter on merit; further taking into account all such subsequent developments which have taken place in the meantime in their proper perspective as also the materials so far collected against the Petitioner in the trial and disposed of the same early in accordance with law.

6. The BLAPL is accordingly disposed of.
Issue urgent certified copy as per rules.

**(D. Dash),
Judge.**

Narayan