

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL NO.119 OF 2022

Kartika Naik

....

Petitioner

Mr. Sidhartha Das, Advocate

-versus-

State of Odisha

....

Opposite Party

Ms. Samapika Mishra, ASC.

CORAM:

MR. JUSTICE D.DASH

ORDER

01.02.2022

Order No.

01. 1. This matter is taken up by video conferencing mode.
2. The Petitioner being in custody in connection with Bargarh P.S. Case No.329 of 2021 corresponding to C.T. Case No.781 of 2021 on the file of learned S.D.J.M., Bargarh running for commission of offence under section -302 of the IPC, has filed this application under section 439 of the Cr.P.C. for his release on bail.
3. Learned Counsel for the Petitioner submits that here in the case, as against this Petitioner, the materials collected are his so called confession before the police which is not admissible in the eye of law and the factum of recovery of the axe at his instance while he is in police custody. He further submits that the materials on record have not surfaced to show the nexus between that axe with the commission of crime and therefore, mere recovery of the axe does not stand as a circumstance. He further submits that as per the case of the

prosecution on earlier occasion goats from the shed of this Petitioner having been stolen apprehending repetition of this said incident, the Petitioner with his son were keeping the watch over the same and it is stated that when the deceased and another had come and got the resistance were returning received the injuries and this Petitioner is said to be the another of the same. In view of all the above, he contends that it is not a case where this Petitioner can be said to have intended to cause death of the deceased and having gone to protect their property in maintaining their livelihood, have been the victim of the circumstance. He submits that the investigation of this case is by now complete and the Petitioner being a local man, there remains no scope on his part to flee from justice when the question of tampering the evidence also does not arise. He, therefore, urges for grant of bail to the Petitioner.

4. Learned Counsel for the State opposes the move. According to her in the facts and circumstances the defence of right of private defence of property is not available to the Petitioner. She further submits that in the trial it would be decided whether the recovered weapon has the nexus with the incident or not and at this stage, it is not permissible to take a definite view over the same.

5. Taking into account the submissions made; further keeping in view the materials on records as those stand against the Petitioner with other surrounding circumstances including the period of detention of the Petitioner in custody and in the absence of any such impediment; while being inclined to grant

bail to the Petitioner in the aforesaid case; it is directed that the Petitioner be released on bail on such terms and conditions as deemed just and proper by the Court in seisin of the case with further conditions that:-

1. he will appear in person before the court in seisin of the case on each date of posting of the case without fail during the period; and
 2. will not indulge himself in any criminal activity.
5. The BLAPL is accordingly disposed of.
6. As the restrictions due to resurgence of COVID-19 situation are continuing, learned Counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned Advocate, in the manner prescribed vide Court's Notice No.4587 dated 25th March, 2020 as modified by Court's Notice No.4798 dated 15th April, 2021 and Court's Office order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

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

Narayan