

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.1785 of 2021

Amar Behera

.... ***Petitioner***
Mr. S. Rath, Advocate

-versus-

State of Odisha

.... ***Opposite Party***
Mr. Samaresh Jena, ASC

**CORAM:
MR. JUSTICE D.DASH**

**ORDER
28.11.2022**

Order No.

03. 1. This matter is taken up through hybrid arrangement (virtual/physical) mode.
2. This is the successive journey of this petitioner, who is in custody in connection with S.T. Case No.148 of 2018 (arising out of G.R. No.398 of 2018 on the file of the learned S.D.J.M., Bhanjanagar) corresponding to Jangannath Prasad P.S. Case No.100 of 2018 pending in the Court of the learned Additional Sessions Judge, Bhanjanagar for offence punishable under sections 302/34, I.P.C. in filing this application under section 439, Cr.P.C. for his release on bail.
3. Learned counsel for the Petitioner submits that this Petitioner (Amar Behera) being arrested in the case is in custody since 23.06.2018 and as yet the trial has not been completed. He further submits that even accepting the prosecution evidence, it cannot be said to be a case where there was any prior planning for the incident and rather, it appears that the incident happened all of a sudden after the deceased asked that accused Dungei (since dead) to see that the smoke which was entering into his house is prevented. He further submits that as per the prosecution case, accused Dungei first assaulted the deceased by an axe on his head and thereafter this accused is said to have given the next blow and then his mother. He submitted that the Petitioner having been granted interim

bail by the Trial Court has in the meantime surrendered and is in custody. It is also submitted that after the death of the father of the Petitioner, who was an accused in this case and has died, this Petitioner is the sole male member of the family and there is nobody in the house to look after their properties. In view of all these above, when it is also not stated that this Petitioner had ever misused the liberty during the period he remained on interim bail, he urges for reconsideration of the prayer for grant of bail, as according to him, his further detention in custody would serve no useful purpose when there remains no scope on the part of the Petitioner to flee from justice and the question of tampering the evidence at this stage also does not arise.

4. Learned counsel for the State without disputing the positions that the Petitioner is in custody since 23.06.2018 and that the trial is yet to complete contends that there being direct evidence that this Petitioner was one of the assailants on the head of the deceased by means of crowbar, a prima facie case against him under section 302, I.P.C. stands. He, therefore, opposes the prayer of the Petitioner for grant of bail.

5. Considering the submissions as advanced and on going through the materials as placed; further keeping in view the surrounding circumstances including the factum of detention of the petitioner in custody for more than four years when the trial is not complete; while being inclined to reconsider the prayer for grant of bail to this petitioner, it is directed that the petitioner be released on bail in the aforesaid case with such terms and conditions as deemed just and proper by the court in seisin of the case with further conditions that:-

- (i) he will appear in person before the court in seisin of the case on each date of posting of the case till conclusion of the trial without fail;
- (ii) will not threaten or terrorize the prosecution witnesses in any manner;
- (iii) will not indulge himself in any criminal activity; and

(iv) will not leave the jurisdiction of the Court in seisin of the case without prior permission of the court.

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

(D. Dash)
Judge

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