

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.2801 of 2022

***Kalia @ Kalandi @
Amarendra Behera*** ***Petitioner***

Mr. P.K. Dash, Advocate

-versus-

State of Odisha ***Opp. Party***

*Mr. Rajesh Tripathy,
Addl. Standing Counsel*

**CORAM:
JUSTICE S.K. SAHOO**

**ORDER
24.06.2022**

Order No.

01. This matter is taken up through Hybrid arrangement (video conferencing/physical mode).

Heard learned counsel for the petitioner and learned counsel for the State.

This is an application under section 439 of Cr.P.C. in connection with S.T. Case No.32 of 2021 arising out of Athagarh P.S. Case No.174 of 2020 pending in the Court of learned Additional Sessions Judge, Athagarh for offences punishable under sections 341/342/354/324/326/307/294/302/34 of the Indian Penal Code.

The prayer for bail of the petitioner was rejected by the learned Additional Sessions Judge, Athagarh vide order dated 22.03.2022.

Learned counsel for the petitioner submitted that the petitioner is in judicial custody since 03.08.2020 and in the meantime, trial has commenced and as per the evidence of eye witness, namely, Mihir Kumar Mohanty @ Miku (P.W.10), the nature of overt act alleged against the petitioner is that he along with co-accused Santosh Behera assaulted him (P.W.10) by fist blows and kicks uttering obscene language. Learned counsel further submitted that so far as the deceased is concerned, P.W.10 has attributed specific overt act against co-accused Sameer, who stated to have stabbed the deceased on the lower abdomen. Learned counsel further submitted that the earlier bail application of the petitioner in BLAPL No.8297 of 2020 was rejected as per order dated 23.03.2021 relying on the statement of the eye witness Mihir Kumar Mohanty and the said Mihir Kumar Mohanty has already been examined in the trial Court as P.W.10 and he has not alleged anything against the petitioner so far as the assault on the deceased is concerned and therefore, the bail application of the petitioner may be favourably reconsidered.

Learned counsel for the State, on the other hand, submitted that P.W.1 Bhagyashree Mohanty is none else than the informant of the case and she is the daughter of the deceased and she has specifically

stated that the petitioner along with two others were holding the deceased when co-accused Sameer stabbed him.

Learned counsel for the petitioner submitted that such a statement of holding of the deceased by three of the accused persons including the petitioner does not find place in the evidence of P.W.10 and in view of the contradictory evidence relating to the participation of the petitioner in the assault of the deceased and further taking into account the progress of the trial and the period of detention of the petitioner in judicial custody, the bail application of the petitioner deserves favourable reconsideration.

Considering the submissions of the learned counsel for the respective parties, the nature of accusation against the petitioner, the nature of evidence adduced so far in the trial Court and taking into account the period of detention of the petitioner in judicial custody, I am inclined to reconsider the prayer for bail and direct the petitioner to be released on bail.

Let the petitioner be released on bail in the aforesaid case on furnishing bail bond of Rs.50,000/- (rupees fifty thousand) with two local solvent sureties each for the like amount to the satisfaction of the learned Court in seisin over the matter with such other conditions as the learned Court may deem just and

proper subject to conditions that the petitioner shall not try to tamper with the evidence and shall appear before the learned trial Court on each date when the case would be posted for trial and shall not indulge in any criminal activities in any manner.

Violation of any conditions shall entail cancellation of bail.

The BLAPL is accordingly disposed of.

Urgent certified copy of this order be granted on proper application.

RKM

