

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.2941 of 2022

Prasant Kumar Jagdev.

....

Petitioner

Mr. Y. Das, Sr. Advocate and
M/s. Manas Kumar Chand, R.R.Mishra, K.Mansingh,
A.Sahoo, Advocates

-versus-

State of Odisha.

....

Opposite Party

Mr. S.S. Pradhan, Addl. Govt. Advocate – For the State,
Miss S. Mohapatra, Advocate & M/s. J.K. Khandayatray,
Jyotirmaya Sahoo, Advocates – For the Victim – Satrughna
Sahoo

**CORAM:
JUSTICE S. PUJAHARI**

**ORDER
20.05.2022**

**Order
No.**

04. **1.** This is an application filed under Section 439 of Cr.P.C. by the petitioner, who is indicted under Sections 332, 333, 323, 324, 325, 326, 307, 353, 465, 471 and 506 of IPC vide Banapur P.S. Case No.113 of 2022 corresponding to G.R. Case No.101 of 2022 in the court of the learned J.M.F.C., Banapur.
- 2.** Heard Mr. Y. Das, learned senior counsel appearing for the petitioner and Mr. S.S. Pradhan, the learned Addl. Government Advocate appearing for the

State, so also Miss S. Mohapatra, learned counsel being authorized by Mr.J.K. Khandayatray, learned counsel appearing for the Victim. Perused the F.I.R. and other relevant papers on record vis-à-vis the contentions raised by the petitioner vide his application at hand.

3. As it appears from the materials on record, in the last election held to elect the representative in the Three Tyre Panchayat Raj System in the State of Odisha, “12.03.2022” was fixed for the date of election of the Chairman of Banapur Block in the district of Khurda. On that date, the elected Panchayat Samiti members of BJP party along with their supporters of more than 500 people had proceeded on procession to the Block Office to participate in the election of the Chairman of Banapur Block, and while the people in procession remained near the Block Office premises, the Panchayat Samiti members who were the electors, entered into the premises of Block Office to participate in the election. Then erupted a noisy

disturbance, for which the police personnel including the Informant-Sub-Inspector present in the vicinity rushed to the spot, and found the BJP supporters to have stopped one white colour Discovery car bearing registration No.OD-02Ay-5775 of the local MLA (petitioner) with the petitioner himself on the Steering, from proceeding into the crowd. The police personnel intervened and while trying to disperse the mob, they also tried to refrain the petitioner from proceeding ahead as he was not entitled to enter into the Block Office on that day. It is further alleged that the petitioner without paying any heed to the advice and caution of police, and while giving a threat to run his vehicle over the crowd if he was not allowed to enter the Block Office premises, drove the aforesaid vehicle into the crowd with intent to kill the members of public and police personnel present there, as a result of his ramming ahead, many police personnel as well as many members of general public received serious and grievous injuries leading to grave commotion and a stampede like situation. Pursuant to the report of

the Informant-Police officer, the case against the petitioner was registered and investigation is reportedly ongoing.

During the course of investigation, it has also come to the light that the aforesaid number plate of the car was found to be fake one, inasmuch as the said registration number belongs to another vehicle of Hyundai company. The petitioner stated to have also been assaulted by the mob, for which counter case at the instance of the present petitioner has been registered against some persons there in the mob. So also, the petitioner stated to have indulged in many criminal cases starting from the year 1992 and this is the twelfth one and in a recent past, during the last Panchayat election he was also involved in Banapur P.S. Case No.81 of 2022 while the Code of Conduct was in force and prior to the same, another case was registered against him vide Balugaon P.S. Case No.156 of 2021 registered under Sections 341/294/323/506 of IPC read with Section

3(1)(r)/3(1)(s) of the S.C. & S.T. (PoA) Act and in the said case he was in custody for some times, but later on released on bail.

4. Upon being arrested by police and forwarded before the J.M.F.C., Banapur, the petitioner applied for bail, and his such plea was rejected by the said learned J.M.F.C. and also by the learned Asst. Sessions Judge, Banapur. Hence, the move before this Court. It may also be mentioned here that pursuant to the prayer of the petitioner for interim bail on the ground of his Cardiac problem requiring urgent medical attention, this Court vide the order dated 22.04.2022 granted him interim bail, and the same has been extended till disposal of this application.

5. In course of considering the request of the petitioner to extension of interim bail, this Court vide the order dated 04.05.2022 directed for examination of the petitioner by a Medical Board, and the District

Medical Board under the Chairmanship of the Chief District Medical Officer, Khordha, has furnished the report dated 08.05.2022. The ultimate opinion of the said Board is extracted here below;

“On verification of medical records and physical examination, it is found that the treatment is genuine and is advised complete rest and undergo regular medical examination and treatment and is advised for further evaluation for permanent pacemaker implantation and/or Coronary Angiogram with or without Revascularisation as mentioned in the recent discharge ticket.”

6. Mr. Y. Das, learned senior counsel appearing for the petitioner submitted, inter-alia, with utmost fairness that although the accusation under Section 307 of IPC as brought against the petitioner is serious in nature, but from the materials on record no such case is made out, inasmuch as almost all the injuries allegedly sustained by the so called victims are simple in nature which could not be said to have been caused by the petitioner running the vehicle over them. He further contended that since the petitioner started his political career from grass root level such as from the post of Sarpanch and now he is

continuing his stint as the MLA for the second time, his presence at the spot at the relevant time can not be said to have been uncalled for or unwarranted, especially when he had his own candidate as well in the election fray, and the event pertained to the Constituency which he represents. With the submission as above, the learned senior counsel sought to justify the presence of the petitioner at the spot, and according to him, the insistence of the petitioner to enter the Block Office premises in the given circumstance could not have been treated as an overt act much less incriminating. He further submits that the allegation as to criminal antecedent of the petitioner as brought by the prosecution vide the affidavit filed by one of the alleged victims of the present case is nothing but a concoction as he was a grass root politician by his opponents at different points of time, and in the context he invites attention of this Court to the counter affidavit sworn by one Sanjib Kumar Pattanaik, said to be the cousin of the petitioner, vide which the status of the criminal cases

registered / pending against the petitioner has been given out. Vide the affidavit relied on by the prosecution / victim particulars have been furnished in respect of criminal cases against the petitioner. The affidavit produced on behalf of the petitioner would show that in four cases out of the list, Final report has been submitted by police as mistake of fact. So also, in all the cases either he is on bail of the Court or extended the benefit of Section 41A of Cr.P.C. considering the triviality of the offences alleged. So far use of alleged number plate of another vehicle is concerned, it is stated that the same can not be stated to be an incriminating circumstance against the petitioner, as the vehicle belongs to a friend of him and no material is there to show that he had changed the number plate.

7. The learned senior counsel thus having relied upon the report of the Medical Board and on the submission made supra, seeks for making the order of interim bail as absolute. He further submits that

since most of the prosecution witnesses being police personnel, there is no chance of influencing witnesses. It is also reported that there is a counter case for brutally assaulting the petitioner there, in which the accused persons have already been granted bail by this Court.

8. Mr. S.S. Pradhan, the learned Addl. Government Advocate appearing for the State resists the application on the ground of the nature and gravity of the case and the criminal antecedent of the petitioner, so also the circumstances in which he alleged to have committed the offence. Referring to the statements of the witnesses recorded by the Investigating Officer so far, Mr. Pradhan submitted that the offence, inter-alia, under Section 307 of IPC is prima-facie made out against the accused-petitioner. Investigation is in progress. The petitioner has criminal antecedents and he was involved in twelve criminal cases. The petitioner had also used the fake number plate in the vehicle which he was

allegedly driving then. In such circumstances, he submits not to allow the petitioner to be released on bail, especially at this stage when the investigation is in progress, for a free and fair investigation. However, he does not dispute the fact that the petitioner appears to have some ailments and now presently after getting interim bail he is undergoing medical treatment.

9. Miss. S. Mohapatra, learned counsel appearing for one of the victims being authorized by his counsel - Mr. J.K. Khandayatray, would submit that the petitioner is a person of influence. The petitioner is a man of means and is a local Legislature, so also, he is indulged in many criminal cases. The petitioner on the alleged date of occurrence tried to enter into the Block Office during the election though he was not entitled to, driving his vehicle. The general public present there when made protest and did not allow him to do so, so also police dissuaded him not to enter into the Block Office, he made an attempt to kill

the persons present in the mob, most of whom are politically opposed to him as well as the police on duty, running the vehicle over them. He has also violated the condition of liberty grant to him earlier in other case. No doubt, he is undergoing treatment, but his health condition cannot be said to be so alarming. Investigation is in progress. Highly incriminating materials are available against the petitioner indicating his involvement in this case. In such circumstances, if the petitioner is allowed to be released on bail at this stage, the same would impede a free and fair investigation and the witnesses also dare not to come forward to speak the truth. As such, the petitioner does not deserve to be released on bail.

10. Before addressing the contention of the parties, it would be apposite to mention here that a detail documentation and appreciation of the evidence collected during the time of investigation is impermissible while considering the prayer under Section 439 of Cr.P.C., has since been well settled in

a plethora of decisions by the Apex Court. In the recent past, the Apex Court in a reportable judgment decided on 18.04.2022 vide Special Leave Petition (CrI.) No.2640 of 2022 (**Jagjeet Singh and others vrs. Ashish Mishra @ Monu & another**), in paragraph-33 have held as follows:-

“33. Before dealing with the case at hand, we may, at the cost of repetition, emphasise that a Court while deciding an application for bail, should refrain from evaluating or undertaking a detailed assessment of evidence, as the same is not a relevant consideration at the threshold stage. While a Court may examine prima facie issues, including any reasonable grounds whether the accused committed an offence or the severity of the offence itself, an extensive consideration of merits which has the potential to prejudice either the case of the prosecution or the defence, is undesirable. It is thus deemed appropriate to outrightly clarify that neither have we considered the merits of the case nor are we inclined to comment on the evidence collected by the SIT in the present case.”

11. So also, the Apex Court in the aforesaid case, in para-30 taken note of the earlier decision in the case of **Prasanta Kumar Sarkar vrs. Ashis Chatterjee and another**, reported in (2010) 14 SCC 496 with regard to the principles for grant of bail. The same reads as thus:-

“30. It will be beneficial at this stage to recapitulate the principles that a Court must bear in mind while deciding an application for grant of bail. This Court in the case of **Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr.**, after taking into account several precedents, elucidated the following:

“9...However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.”

(Emphasis Supplied)”

12. Keeping in view the aforesaid settled position of law, the prayer for bail of the petitioner vis-à-vis the materials on record are required to be addressed. In this case, the nature of incident as depicted from

record, this Court for the limited purpose of bail hardly finds any relevancy in the nature, number of situs and sizes of injuries received by the victims as the intention of the accused-petitioner became manifest when he drove his four wheeler into the crowd, particularly amidst the protesters, despite the desistance, dissuasion and caution from the police personnel on duty which resulted in ramming and injuries to the police personnel and the protesters / members of the general public. As it reveals, while giving threat to run the vehicle over the protesters, he drove the vehicle into the crowd that too using the registration number of a different vehicle. Such indulgence and overt act can never be treated as becoming of a public representative. That apart, the series of criminal cases attached to his antecedent speak against his credibility to abide by condition, if any, imposed in case of his bail, more so when he has also not abide by the conditions not to indulge in any criminal activities while allowing him to be released on bail in connection with Balugaon P.S. Case No.156

of 2021 thereafter, but still involved in two such criminal cases during the Panchayat election including the present one. Furthermore, the petitioner is also a person of means and influential one being the member of the State Legislature. Investigation of the case is in progress. Release of the petitioner on bail at this stage also seriously impeding a free and fair investigation is not ruled out.

13. Having regard to the aforesaid facts and circumstances, especially the nature and gravity of the case incident vis-à-vis the bail plea of the petitioner, this Court also needs to be alive to the settled position of law for grant of bail as reiterated in the case of **Prasanta Kumar Sarkar** cited supra. As to the medical ground taken by the petitioner, this Court on having perused the opinion of the Medical Board, is of the view that while being in judicial custody, he can seek for any medical check-up or treatment, and the Jail Authority can take appropriate steps in that regard in the manner known

to law and also as per the responsibility bestowed on them, if his health condition so warrants. In the facts and circumstances, and for the discussion as above, this Court, therefore, is not inclined to grant bail to the petitioner, more particularly when the investigation is ongoing.

14. Hence, the BLAPL stands dismissed. The accused-petitioner shall surrender to judicial custody by 23rd of May, 2022 positively, failing which steps be taken against him to cause his production before the Court concerned.

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

(S.Pujahari)
Judge

MRS