

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.3030 of 2022

Budhua Oram

.... ***Petitioner***
Mr. S.K. Dash, Advocate

-versus-

State of Odisha

.... ***Opp. Party***
Mr. P.K. Pattnaik, AGA

CORAM:
JUSTICE G. SATAPATHY

ORDER
09.11.2022

Order No.

- 03.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. This is an application U/S. 439 of Cr.P.C. by the petitioner for grant of bail in connection with S.T. Case No.10 of 2022 arising out of Bisra P.S. Case No.92 of 2021 pending in the file of learned First Additional Sessions Judge, Rourkela for commission of offences punishable under Section 302 of IPC, on the allegation of committing fratricide.
 3. In the course of hearing of the bail application, Mr. S.K. Dash, learned counsel for the petitioner submits that the petitioner has been falsely implicated in this case and he is no way connected with the commission of murder of the deceased who is the younger brother of the petitioner. It is also submitted by him that even if the allegation on record are considered and accepted at their face value, no offence U/S.302 of IPC is made out against the petitioner as the petitioner and deceased were found to be quarreling with each other in an inebriated condition for some land dispute and the petitioner losing

cool took away one wooden handle of an axe and assaulted on the head of the deceased and thereby, no intention or motive being attributed to the petitioner, no offence U/S. 302 of IPC would reasonably be made out against the petitioner. It is further submitted by him that the allegation of murder would have been attracted, had there been any intention on the part of the petitioner to kill the deceased but the manner of assault itself would go to indicate absence of any intention and, therefore, the present case at best be a case U/S.304 of IPC and the petitioner then at best be prosecuted for that offence which is culpable homicide not amounting to murder and the petitioner having admittedly detained in custody since more than a year, may kindly be released on bail.

4. On contrary, learned counsel for the State, however, does not dispute about witnesses stating about existence of land dispute and the petitioner and deceased quarreling with each other after taking liquor, but, he, however, strongly opposes the bail application of the petitioner by taking into the eye witnesses' account stating against the petitioner to have killed the deceased by giving successive blows with an wooden handle of an axe. It is accordingly prayed by learned counsel for the State to reject the bail application of the petitioner.

5. Considering the rival submissions made, taking into account the pre trial detention of the petitioner since 08.09.2021 and the manner and circumstance of assault and the fact that the petitioner and deceased were two brothers and there being landed dispute between them and regard being had to the weapon of offence used in this case and taking into consideration the totality of circumstance on record and further the fact that the admitted materials placed on record do not suggest that the petitioner would abscond or tamper

with the evidence of witnesses in the event of his enlargement on bail, this Court considers the bail application of the petitioner favourably.

6. Hence, the prayer for the bail of the petitioner stands allowed and the petitioner is allowed to go on bail on furnishing bail bonds of Rs.25,000/- with two solvent sureties each for the like amount to the satisfaction of the learned Court in seisin of the case on such terms and conditions as deem fit and proper with further conditions that the petitioner shall attend the trial Court on each date of posting without fail unless his attendance is dispensed with and that he shall not leave the jurisdiction of the trial Court without prior permission till disposal of the case.

7. Accordingly, the BLAPL stands disposed of.

8. Issue urgent certified copy of the order as per Rules.

(G. Satapathy)
Judge

Subhasmita

