

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.260 of 2022

Kanhu Chhatai

....

Appellants

Mr.Jyotirmaya Sahoo, *Advocate*

-versus-

State of Odisha & another

....

Respondents

Mr.P.C.Das, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

21.06.2022

Order No.

02.

1. This matter is taken up through Hybrid arrangement (virtual/physical mode).
2. Heard learned counsel for the appellant, as well as learned Additional Standing Counsel.
3. The present appeal has been filed challenging the order dated 31.03.2022 passed by the learned Additional Sessions Judge, Aska in rejecting the bail application filed by the appellant in connection with Sheragada P.S.Case No.99 of 2018 corresponding to S.T.Case No.56 of 2019(T) pending before the learned Additional Sessions Judge, Aska.
4. The prosecution case in brief is that on the basis of F.I.R. lodged by one Judhisthir Das before the I.I.C., Sheragada P.S. alleging therein that one Gopia Majhi had taken a sum of Rs.1,00,000/- from the elder brother of the informant to run a business. It is further alleged that he had returned a sum of

Rs.50,000/-. After 15 days Gopia called the brother of the informant and while he went to Gopia, on the way Jaga, Sushanta and other associates attacked the brother of the informant by means of firing and sharp weapons and they have kidnapped the brother of the informant.

5. It is submitted by the learned counsel for the appellant that the appellant has been falsely implicated in this case and he is in custody since 20.11.2018. He further submits that there is only one eye witness to the occurrence namely, E.Biswanath Patra. In his statement the said eye witness stated that on the date of occurrence while passing by the area where the occurrence took place, he saw four to five persons were assaulting the deceased by means of kati. Further the statements of two of the accused persons namely, Nirakar Swain and Sunil Kumar Pollei recorded under section 27 of the Evidence Act reveals that iron rod and kati were recovered by the Police. In such view of the matter, learned counsel for the appellant submits that there is no direct material to implicate the present appellant in the alleged crime. It is further stated that although the abovenamed witness was not the occurrence witness and has probably seen the occurrence, but no T.I. parade was conducted to identify the accused persons involved in the present crime.

6. Learned Additional standing Counsel on the other hand submits that there are materials on record to establish the fact that the present appellant is a party to the conspiracy and there is ample materials on record to establish the fact that the appellant had entered into a contract with one Gopia Majhi and accordingly a deal was finalized to pay the amount to the present appellant. Although there is no direct materials to implicate the present appellant, he submits that on the basis of the statement of the informant, the appellant is not entitled to be enlarged on bail. He further submits that since trial of the case has not commenced release of the appellant at this juncture would definitely

affect the trial.

7. Having heard learned counsel for the parties and considering the materials placed on record as well as statements of the witnesses and further taking into consideration the fact that two accused persons namely, Nirakar Swain and Sunil Kumar Pollei have been released on bail by this Court vide order dated 04.03.2020 in CRLA No.610 of 2019 and after considering the period of custodial detention of the appellant, which near about three and half years, this court is inclined to grant bail to the appellant and it is directed that let the appellant be released on bail in the aforesaid case on furnishing a bail bond of Rs.50,000/- (Rupees Fifty thousand) with one local solvent surety for the like amount to the satisfaction of the learned court in seisin over the matter subject to the following terms and conditions

- i) he shall appear before the concerned Police Station once in a week preferably on Sunday between 10 A.M. to 1 P.M. till conclusion of trial.
- ii) shall cooperate with the trial of the case and shall appear in trial court on each and every date to which the case is posted.
- iii) shall not indulge in any offence of similar nature
- iv) shall not tamper with the prosecution evidence while on bail.
- v) shall not influence or threaten any prosecution evidence while on bail.
- vi) Violation of any of the terms and conditions shall entail cancellation of bail.

8. The trial court may also impose any other condition(s) as deem fit and proper.

9. The CRLA is allowed and the order dated 31.03.2022 passed by the learned Additional Sessions Judge, Aska in S.T.Case No.56 of 2019(T) is set aside.

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

