

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 3235 of 2022

Anil Kumar Jena

....

Petitioner

Mr. M.K. Chand, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. Karunakar Gaya, ASC

Mr. P.R. Chhatoi, Adv (Informant)

CORAM: JUSTICE V. NARASINGH

ORDER

17.11.2022

Order No.

04.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner, learned counsel for the informant and learned counsel for the State.
3. The petitioner is an accused in S.T. Case No.16 of 2021, pending in the file of learned Additional Sessions Judge, Kendrapara, arising out of Pattamundai P.S. Case No.308 of 2020, offence under Sections 450/302/397/120-B of IPC.
4. Being aggrieved by the rejection of her application for bail U/s.439 Cr.P.C. by the learned Additional Sessions Judge, Kendrapara by order dated 04.04.2022 in the aforementioned case, the present BLAPL has been filed.
5. It is submitted by the learned counsel for the petitioner that the petitioner is in custody since 17.08.2020 and as the case has already been committed, further continuance of the petitioner in custody is not warranted.
6. Learned counsel for the petitioner also relies on the orders passed in respect of the co-accused Deepak Sethy, Papu @ Prakash

Patra, Ashok Patra @ Papuna, Susanta Patra@ Susha @ Sushant Patra, Ranjit Nayak @ Ranjan, who have been released on bail by this Court by orders dated 20.01.2021 in BLAPL No.24 of 2021, dated 22.04.2021 in BLAPL No.331 of 2021, dated 27.09.2021 in BLAPL No.895 of 2021, dated 12.05.2022 in BLAPL No.10804 of 2021, dated 12.10.2022 in BLAPL No.7367 of 2022 respectively.

7. It is submitted with vehemence by the learned counsel for the petitioner that since the petitioner is similarly circumstanced with accused persons, who have been released on bail and that there is recovery of cash at the instance of the other accused persons of and also weapon of offence recovered from the co-accused Susanta Patra@ Susha@ Sushant Patra (BLAPL No.10804 of 2021) and Ranjit Nayak@ Ranjan (BLAPL No.7367 of 2022) and who have since been released on bail, he is also entitled to be released on bail.

8. It is stated that the accused persons from whom such recovery was made under Section 27 of the Evidence Act, they have been released on bail. Hence, on the ground of parity, the petitioner seeks release.

9. Learned counsel for the State as well as the informant oppose the prayer for bail.

10. This Court had occasion to peruse the order passed by a Co-ordinate Bench in the cases referred to herein above. Admittedly in the case at hand no T.I. Parade has been conducted and the same weighed with the Court while considering the bail application of the co-accused persons, and since their identification was under a cloud. And, giving benefit of doubt, this Court in the orders adverted to hereinabove directed release of the accused-petitioners therein.

11. In the case at hand one of the material witness Jagannath Behera, is a Sweet Shop owner in the village of the deceased. Admittedly, the petitioner also belongs to same village. He has specifically identified the petitioner who along with others purchased “Gulabazamun” from his shop and it is apt to note that traces of the sweet purchased from his shop was found at the crime site.

12. Hence it cannot be said that the present petitioner is similarly circumstanced with the other co-accused persons who are released on bail because their identity could not be proved, as noted.

13. Considering the statement of Jagannath Behera who has clearly mentioned the name of the petitioner, as already noted, this Court is of the considered view that the petitioner is not similarly circumstanced with the co-accused. Hence the bail application stands rejected.

14. It is stated that the petitioner is in custody for more than two years. Learned Court in seisin is called upon to expedite the trial.

15. It shall be open to the petitioner to renew his prayer before the learned Court in seisin after examination of Jagannath Behera, which shall be considered on its own merit without being influenced by the earlier rejection or the order passed by this Court.

(V. NARASINGH)
Judge