

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL NO.2613 OF 2021

Ram Chandra Madkami

.... ***Petitioner***
Mr. J.K. Panda, Advocate

-versus-

State of Odisha

.... ***Opposite Party***
Mr. S.K. Nayak, AGA.

**CORAM:
MR. JUSTICE D.DASH**

ORDER

03.01.2022

Order No.

- 03.
1. This matter is taken up through hybrid arrangement (virtual/physical) mode.
 2. This is the second journey of the Petitioner who is in custody in connection with Kalimela P.S. Case No.123 of 2020 corresponding to G.R. Case No.267 of 2020 on the file of learned J.M.F.C., Motu at M.V.-79 running for alleged commission of offence under Section 302/201/34 of the IPC, in filing this application under Section-439 of the Cr.P.C. for his release on bail in the above mentioned case.
 3. Learned Counsel for the Petitioner submits that the case of the prosecution as against the Petitioner is not based on direct evidence and here the prosecution has projected some circumstances against the Petitioner in fastening the guilt upon him in intentionally causing death of his father and causing disappearance of the evidence by throwing the dead body into the river. It is further submitted that those circumstances are (i) statement of the Petitioner said to have been made before the co-villagers; and (ii) recovery of the axe at the instance of the

Petitioner. He submits that in so far as the extra-judicial confession is concerned, no such material on record has come to surface that as to why the Petitioner reposed confidence on the said co-villagers that having killed his father, he went and so stated about the incident. It is submitted that so far as the recovery of the axe at the instance of the Petitioner is concerned, there stands no such supporting material to connect the axe to have been so used in inflicting the injuries on the deceased. In view of all these above, further placing the position that the trial has not yet commenced; he urges for grant of bail to the Petitioner as according to him, further detention of the Petitioner in custody would serve no useful purpose; especially when there remains no scope on his part to flee from justice and tamper the evidence. It is also submitted that co-accused persons being on bail have been abiding by the terms and conditions and no such adverse report has come against them.

4. Learned Counsel for the State opposes the move. According to him, this Petitioner is the principal accused and having longstanding grudge against his father was finding opportune moment to do away with him. He further submits that it is too early a stage to accept the submission of the learned Counsel for the Petitioner as regards the reliability of the statement said to have been made by the Petitioner before the co-villagers and the value of the materials in showing the nexus between the axe and the fatal injury. He however does not dispute the position that the co-accused persons are on bail. He however places the distinguishing feature in stating that they had no role in causing death and had been arraigned in the case only for helping the Petitioner in causing disappearance of evidence.

At this stage, learned Counsel for the Petitioner submits that very foundation of the prosecution case is that, the deceased was practicing witchcraft and thus in the absence of any direct evidence, since the deceased was having so many enemies in the village; the possibility of someone else being involved in the incident is not ruled out and the investigation having not been directed in that light has unnecessarily implicated the Petitioner.

5. Taking into account the submissions made; further keeping in view the materials on records as those stand against the Petitioner with other surrounding circumstances including the period of detention of the Petitioner in custody and on going through the order passed by the learned Sessions Judge; while being inclined to reconsider the prayer for grant of bail to this Petitioner; it is directed that the Petitioner be released on bail in the aforesaid case on such terms and conditions as deemed just and proper by the Court is seisin of the case with further conditions that:-

1. he will appear in person before the Court in seisin of the case on each date of posting of the case without fail;
 2. will appear before the Kalimela P.S. every Monday in between 10 am to 2 pm till conclusion of the trial;
 3. will not indulge himself in any criminal activity; and
 4. will not leave the jurisdiction of the Court in seisin of the case till end of trial.
6. The BLAPL is accordingly disposed of.
Issue urgent certified copy as per rules.

**(D. Dash),
Judge.**