

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 3579 of 2022

***Budha @ Kanhu Charan
Mishra***

....

Petitioner

M/s. S. Mohanty, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. P.K. Maharaj, ASC

CORAM: JUSTICE V. NARASINGH

**ORDER
02.08.2022**

Order No.

02.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned counsel for the State.
3. The petitioner is an accused in G.R. Case No.439 of 2009, on the files of learned S.D.J.M., Bhanjanagar, arising out of Bhanjanagar P.S. Case No.168 of 2009, offences under Section 302/34 of IPC read with Section 25(A) and 27 of the Arms Act and is in custody since 19.12.2009.
4. Being aggrieved by the rejection of his application for bail U/s.439 Cr.P.C. by the learned Additional Sessions Judge, Bhanjanagar, by order dated 15.03.2022 in the aforementioned case, the present BLAPL has been filed.
5. It is submitted by the learned counsel for the petitioner that he is in custody since 19.12.2009 for more than 12 years yet there has been no substantial progress in the trial. It is submitted that there are no eyewitnesses to the occurrence and the basis of implication is circumstantial evidence. It is further submitted that

this Court by order dated 26.07.2010 in BLAPL No.10958 of 2010 directed the release of the co-accused Rahul @ Rankanidhi Jena and Sanjeeb Kumar Sahu learned counsel for the petitioner also places reliance the order dated 29.06.2022 passed by this Court in BLAPL No.8014 of 2021 by which co-accused Debasish Bhoi @ Bapi has been released. The release of the present petitioner is sought inter alia on the ground of parity.

6. Learned counsel for the State opposes the prayer. Submits that in the statement of one of the witnesses Asutosh, petitioner has been named and because of his criminal antecedent, releasing him at this stage would affect the impending trial.

7. Perused the statements of Asutosh and Bulu swain placed by the learned counsel for the State and the orders passed by this Court in the bail applications relating to the co-accused persons adverted to above.

8. Considering the same and keeping in view that the petitioner is in custody for more than 12 years and there is no progress in trial and release of the co-accused who are more or less similarly circumstanced, this Court directs the petitioner to be released on bail on such terms to be fixed by the learned Court in seisin over the matter so as to ensure his presence on each date of trial. While doing so learned Court shall ensure that one of the sureties shall be the immediate family member of the petitioner

9. Accordingly, the BLAPL stands disposed of.

10. Urgent certified copy of this order be granted as per rule.

(V. NARASINGH)
Judge

Santoshi