

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.313 of 2022

Lipu Sahoo and another

....

Appellants

Mr. Partha Sarathi Nayak, Advocate

-versus-

State of Odisha and another

....

Respondents

Mr.K.K. Nayak, ASC for State-Respondent No.1

CORAM:

JUSTICE A.K.MOHAPATRA

ORDER

17.05.2022

Order No.

04.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).

2. Heard learned counsel for the Appellants, learned counsel for the State-Respondent No.1 and learned counsel for the Informant-Respondent No.2. Perused the Case Diary, F.I.R. and statement of the witness on record.

3. This appeal has been filed by the Appellants challenging the order dated 15.12.2021, passed by the learned Addl. Sessions Judge, Talcher, in BLAPL No.790 of 2021, which arises out of G.R. Case No.2188 of 2021 in connection with Kaniha P.S. Case No.303 of 2021 for commission of alleged offences under Sections 341/323/307/506/34 of IPC which turned to U/s.341/342/302/307/506/34 of I.P.C., rejecting the bail application filed by the Appellants.

4. It is submitted by learned counsel for the Appellants that Appellants are in custody since the date of their arrest, i.e. 20.11.2021. It is further submitted that the investigation of the case is over and police has submitted charge-sheet against the Appellants in the case. The further submission is that the occurrence took place on 05.11.2022 and on the date of occurrence, the victim was committed a theft of a bore well pipe as alleged from the land of the Appellants. Therefore, the deceased was called by the Appellants towards the jungle, who tied his legs and hands in a rope. They assaulted Dusmanta Naik, the deceased by means of sticks. Thereafter they left the place. The deceased was forwarded to the hospital. Some days after the alleged assault, the deceased complained uneasiness and there was also severe blood vomiting, who subsequently died. So it is presumed that the death was due to the injuries sustained by the deceased. From the post-mortem report it appears that the cause of death was show as 'cardiac arrest'. In such view of the matter, learned counsel for the Appellants submits that the Appellants may be enlarged on bail on such terms and conditions as deem fit and proper by this Court, which they shall abide and subsequently they will cooperate in the investigation.

5. Leaned counsel for the Informant submits that the victim has died due to cardiac arrest and accordingly, he does not want to oppose the bail application of the Appellants.

6. Learned counsel for the State opposes the move of the Appellants on the ground that the nature of allegations are serious in nature and further submits that the post-mortem report is not the conclusive evidence in law and it is only after the trial, the cause of death can be ascertained whether it is homicidal of nature or not.

Accordingly, he prays for rejection of the bail application of the Appellants.

7. Having heard learned counsel for the Respondents and considering the materials available on record as well as the submission of the Informant, this Court sets aside the order dated 15.12.2021, passed by the learned Addl. Sessions Judge, Talcher, in BLAPL No.790 of 2021, which arose out of G.R. Case No.2188 of 2021 in connection with Kaniha P.S. Case No.303 of 2021. It is further directed that let the Appellants be released on bail subject to furnishing a bail bond of Rs.30,000/- (Rupees Thirty thousand) each with one solvent surety each for the like amount to the satisfaction of the learned court in seisin over the matter subject to the terms and conditions as fixed by the trial court. Further, the court below shall do well to impose condition that the Appellants shall not influence or threaten or terrorize the Informant or his family members or any of the prosecution evidence in any manner whatsoever, in such event, it is open for the trial court to revoke the bail application of the Appellants and issue NBW and take the Appellants to judicial custody forthwith.

8. With the above direction, the CRLA is accordingly allowed.

9. Issue urgent certified copy of this order on proper application.

(A.K. Mohapatra)
Judge