

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.328 of 2022

Banka Bihari @ Santosh Kumar ***Appellant***
Bihari

Mr. Prasanna Kumar Mishra, Advocate

-versus-

State of Odisha and another ***Respondents***
Mr.P.C. Das, ASC for State-Respondent No.1

CORAM:
JUSTICE A.K.MOHAPATRA

ORDER
28.06.2022

Order No.

03. 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. Heard learned counsel for the Appellant and learned counsel for the State-Respondent No.1. Perused the Case Diary, F.I.R. and statement of the witness on record.
3. This appeal has been filed by the Appellant challenging the order dated 23.04.2022, passed by the learned Judge, Special Court-cum-Additional Sessions Judge, Kamakhyanagar in C.T. (Spl.) Case No.30 of 2021, arising out of Kamakhyanagar P.S. Case No.222 of 2021, for commission of alleged offences under Sections 147/148/341/294/506/302/149 of I.P.C. and Section 25/27 of the Arms Act read with Section 3(1)(r)(s)/3(2)(v)(va) of S.C. & S.T. (POA) Act , rejecting the bail application filed by the Appellant.

4. The prosecution case, in brief, is that on 16.06.2021 at about 8 P.M., while his elder brother Tofan Patra and one Rinku Patra were returning from market, near Sarangadhar Stadium, Kamakhyanagar, the present appellant along with others forming a gang abused him in obscene language aspersing his caste. It is alleged that all the accused persons surrounded Tofan Patra and then accused Biswajit Behera, Rashmiranjan Behera and Chagani Bihai picked out three guns and fired at Tofan Patra and he fell down at the spot with a pool of blood when, it is alleged that the other victim Rinku Patra narrowly escaped and intimated the villagers who shifted Tofan to Kamakhyanagar hospital and then to the District Headquarter Hospital and as his condition was serious, he was referred to the SCB Medical College & Hospital, Cuttack, where he died during treatment.

5. It is submitted by learned counsel for the Appellant that he is in jail custody since the date of his arrest, i.e. 19.4.2022. It is further submitted that there are several disputes between the parties due to their caste difference and further the entire incident took place at the spur of the moment having no mense rea. There is also no material against the Appellant to prove his involvement in the alleged offence. It is also submitted that in the event of bail, he shall cooperate in the trial of the case.

6. Learned counsel for the State on the other hand submits that the nature of allegation made in the FIR is very serious and appellant should not be granted any mercy by this Court and his application may be rejected.

7. Considering the aforesaid facts and circumstances of the case and keeping in view the nature of allegation made and the period of detention of the Appellant, this Court sets aside the order dated 23.04.2022, passed by the learned Judge, Special Court-cum-Additional Sessions Judge, Kamakhyanagar in C.T. (Spl.) Case No.30 of 2021, arising out of Kamakhyanagar P.S. Case No.222 of 2021. It is further directed that let the Appellant be released on bail subject to furnishing a bail bond of Rs.30,000/- (Rupees Thirty thousand) with two solvent sureties for the like amount to the satisfaction of the learned court in seisin over the matter subject to the terms and conditions as would be fixed by the trial court. Further, the court below shall do well to impose condition that the Appellant shall not influence or threaten or terrorize any of the prosecution witness, violation of which shall entail cancellation of bail application and learned trial court shall issue NBW and take the Appellant to 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