

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.3996 of 2022

Uchhab Dalei

.... ***Petitioner***
Mr. Amitav Tripathy, Advocate

-versus-

State of Odisha

.... ***Opposite Party***
Mr. P.C.Das, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

24.08.2022

Order No.

03.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner as well as learned Additional Standing Counsel for the State.
3. This is an application under Section 439 of the Code of Criminal Procedure filed by the Petitioner for bail in connection with Fategarh P.S.Case No.152 of 2021 corresponding to S.T.Case No.06/06 of 2022 pending in the Court of the learned Additional Sessions Judge, Nayagarh for alleged commission of offence under Sections 341,323, 324,325, 294, 354, 506, 307, 302/34 of the Indian Penal Code.
4. Learned counsel for the Petitioner files the surrender certificate in the Court today. The same be kept on record. It appears from the surrender certificate that the Petitioner has already surrendered and taken to judicial custody on 16.08.2022.
5. It is submitted by the learned counsel for the Petitioner that the Petitioner is in custody since 13.08.2021. He further submits that in

the meantime the investigation has been concluded and charge sheet has been filed. Learned counsel for the Petitioner submits that it is the consistent evidence of all the independent witnesses, who are co-villagers that the Petitioner and the informant group had a strain relationship although both of them belong to one village. Case and counter case have been filed against both groups. However, on 17.08.2021 both group had a hot exchange of words. Thereafter informant group members entered into the house of the present Petitioner being armed with sword, bhujali, stick and started assaulting the family members of the present Petitioner. In retaliation to such assault, the present petitioner, his son and other family members counter attacked the informant group members by means of crowbar, stick, bhujali and other arms and weapons. Further referring to the statements of the witnesses, learned counsel for the Petitioner submits that no such witnesses have stated that while scuffle were going on, both the groups came out of the house of the present petitioner and both were fighting and during scuffle, Achyuta Dalei, who is the main assailant dealt blows on the deceased Sudhir Dalei and the deceased sustained bleeding injury and fell down on the ground and thereafter the deceased succumbed to the injuries.

6. On earlier occasion the Petitioner along with others have approached this court by filing BLAPL No.11344 of 2021. This Court while considering the bail application of the above named accused persons was pleased to reject the bail application of Achyuta Dalei. Further this Court granted bail to Sibananda Dalei and the bail application of Uchhab Dalei was not pressed by the learned counsel appearing in that matter.

7. The present application has been filed by the Petitioner after rejection of the earlier bail application on the ground that the

Petitioner is not the main assailant and further it is submitted by the learned counsel for the Petitioner that the informant group assaulted the Petitioner and his family members by entering into his house being armed with deadly weapons. He further submits that for self defence, the Petitioner and other family members defended themselves and the same led to a scuffle between two groups. In course of such scuffle, the deceased sustained injuries and died subsequently.

8. Learned counsel appearing for the State on the other hand opposes the bail application on the ground that the Petitioner had instigated the other family members to assault the informant and his family members. However, he does not dispute the fact that the informant family members had entered into the house of the present Petitioner and started assaulting them first. It is further stated by the learned counsel for the State that in the event the Petitioner is released on bail the trial is likely to be affected. On such ground learned State counsel urges rejection of the bail application of the Petitioner.

9. Having heard learned counsel for the parties and after careful examination of the materials placed before this Court and upon careful perusal of the case diary, this Court is of the considered view that so far as the offence under section 302 of the Indian Penal Code is concerned, the deceased Sudhir Dalei died due to assault on his head by one Achyuta Dalei, whose bail application has been rejected and so far as the present Petitioner is concerned, allegation is that they had assaulted earlier the informant group members. However upon perusal of the materials on record, it appears that the informant group members forcibly entered into the house of the Petitioner first thereafter the Petitioner and his other family members assaulted the

informant. Considering the submissions of the learned counsel for both parties and taking into consideration the fact that the Petitioner is in custody for one year, this Court is inclined to grant bail to the Petitioner and it is directed that let the Petitioner be released on bail in the aforesaid case on furnishing a bail bond of Rs.30,000/- (Rupees Thirty thousand) with two local solvent sureties each for the like amount to the satisfaction of the learned court in seisin over the matter on such terms and conditions as would be deemed fit and proper by the learned court below.

10. BLAPL is accordingly disposed of.

11. Issue urgent certified copy as per Rules.

RKS

