

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.4268 of 2022

Nilambar Baitharu

....

Petitioner

Mr. J.N.Panda, Advocate

Mr. Debashis Panda, Advocate

-Versus-

State of Odisha

....

Opposite Party

Mr. S.S.Mohapatra, Additional Standing Counsel

CORAM:

JUSTICE R.K. PATTANAİK

DATE OF ORDER : 19.09.2022

1. Instant petition under Section 439 Cr.P.C. is filed by the petitioner directing his release on bail in connection with M. Rampur P.S. Case No.110 of 2021 corresponding to C.T. Case No.143 of 2021 (Sessions) pending in the file of learned Additional Sessions Judge, Bhawanipatna on the grounds stated therein.

2. Heard Mr. D.Panda, learned counsel for the petitioner and Mr. Mohapatra, learned ASC appearing for the State.

3. It is contended by Mr. Panda that the petitioner is in custody since the date of his arrest i.e. 11th June, 2021 and in the meantime, after submission of chargesheet, the case has been committed to the Sessions Court for trial and all the material evidence having been collected during investigation which stood completed, there is no possibility of tampering with it and having regard to the fact that the statements of the informant and others received during the enquiry in UD case differ from that of the statements recorded in course of investigation, the involvement of the petitioner in the death of the deceased wife is in cloud of suspicion. According to Mr. Panda, the victim died on account of poisoning and as such,

she committed suicide and in so far as the postmortem examination report is concerned, it does not support the claim of the petitioner having forcibly administered poison to his deceased wife since there was no external injuries noticed during such examination and therefore, under the above circumstances, the petitioner, who has remained in judicial custody for more than a year should be enlarged on bail on any terms and conditions as would be fixed by the Court.

4. On the other hand, Mr. Mohapatra, learned ASC strongly objected to the release of the petitioner on the ground that there is sufficient evidence on record to show his involvement in the alleged incident. It is contended that the statements of the material witnesses do suggest that the petitioner was solely responsible for causing death of the victim by forcefully administering poison to her which was witnessed by a child aged about 12 years being present near the spot and in such view of the matter, notwithstanding the statements of some witnesses in UD case, the petitioner since was found to have committed the alleged mischief or overt act should not be released on bail.

5. Initially the petitioner had approached this Court in BLAPL No.9507 of 2021 but the same was rejected by order dated 12th January, 2022. At that point of time, the investigation had been over with the filing of chargesheet. Considering the nature of allegations and presence of a child witness and his statement, the Court was not inclined to believe the defence of the petitioner and thus, had then declined to release him on bail. Now, the prayer for release has been renewed after about eight months on the self-same ground at a stage when the case has been before the Sessions Court after commitment. The question is, except the length of detention and the fact that the case has suffered commitment in the

meantime, whether, any fresh circumstances exist to reconsider the bail plea of the petitioner?

6. Mr. Panda, learned counsel for the petitioner refers to the postmortem examination report in respect of the deceased and contends that the death is suggestive of insecticidal poisoning and there was no external injuries found on her body and therefore, the conclusion was of a suicidal death but on account of the version of a child witness, the petitioner has been implicated. Mr. Panda also refers to the statements of the witnesses recorded in M. Rampur P.S. UD Case No.4 dated 10th June, 2021 to convince the Court that none ever alleged involvement of the petitioner by then. It is submitted that if the family of the deceased was informed about the incident by the child witness before the victim was rescued and shifted for treatment, what prevented the informant and others having knowledge about it not to disclose regarding the alleged conduct of the petitioner while their statements being recorded in the UD case which therefore creates a doubt when it was claimed otherwise during the police investigation. Mr. Mahapatra, learned ASC though admits that the statements in UD case do not allege anything against the petitioner but the disclosure of the child witness about the incident is a strong piece of evidence which cannot be ignored and entirely thrown out.

7. The death of the deceased took place on 10th June, 2021 and on the same day, postmortem over her dead body was conducted. Admittedly, during such examination, no bruises or external injuries were noticed nor any ligature mark found on the neck of the deceased. The death of the victim was held to be on account of insecticidal poisoning with an opinion in the postmortem report that it was suicidal in nature. The Court perused the statements of the witnesses received during the enquiry in the UD case. None of

the witnesses, whose statements were recorded on 10th June, 2021 alleged the involvement of the petitioner. However, it is noticed that some witnesses, who were examined on 11th June, 2021 claimed to have heard about the alleged mischief committed by the petitioner. On the date of incident itself, the child witness claimed to have informed the family of the deceased regarding the incident but such disclosure was not revealed during the enquiry in the UD case referring to which Mr. Panda, learned counsel for the petitioner submits that the involvement of the accused should not therefore be believed, rather, it is a case of suicidal death of the victim, who herself appears to have consumed the pesticide. As to why the family of the victim failed to disclose the mischief of the petitioner, if it had been informed to them by the child witness, is certainly a matter of enquiry which can be unearthed during the trial. In any case, the statements of witnesses recorded on 11th June, 2021 in UD case do appear somewhat different than others, who have been examined on the previous day i.e. 10th June, 2021. The Court perused the statement of the child witness recorded under Section 161 Cr.P.C. wherein he disclosed that the petitioner slapped the deceased and then brought a bottle and made the victim consume it by laying her on bed and when it was objected by him but he was prevented by the petitioner. The same statement was repeated by the child witness before the Magistrate, who recorded it under Section 164 Cr.P.C. The statement of the informant under Section 161 Cr.P.C. dated 11th June, 2021 revealed the fact regarding the incident as informed to him by the child witness, namely, Ankit Saraf. The cause of death is no doubt on account of poisoning and as per the informant, the deceased was stated to have been forcibly administered with it and that was at the instance of the petitioner which was informed to them by the child witness. As earlier stated, why the family of the victim could not disclose the said fact during enquiry has to be verified during the trial and therefore, at this

stage, it would not be proper to form any opinion in that respect either one way or the other as that might prejudice and affect the rights and interest of the parties. Considering the materials on record, without expressing anything on the merits of the case vis-à-vis the culpability of the petitioner, the Court is of the view that at this stage, the petitioner should not be released on bail, inasmuch as, no fresh circumstances do exist to reconsider his bail plea and review the earlier decision in BLAPL No.9507 of 2021.

8. Hence, it is ordered.

9. In the result, petition under Section 439 Cr.P.C. stands rejected.

(R.K. Pattanaik)
Judge

TUDU