

IN THE HIGH COURT OF ORISSA AT CUTTACK
BLAPL No.3387 of 2021

Bhaskar Biswal

....

Petitioner

Mr.Adyasidhi Mishra, Advocate

Versus

State of Odisha

....

Opposite Party

Mr.S.S.Pradhan, AGA

Mr. S. Mishra, Adv.

(for the informant)

CORAM:

JUSTICE SAVITRI RATHO

ORDER

10.11.2022

Order No.

18.

(Through hybrid mode)

1. This is the 3rd application of the petitioner under Section 439 of the Cr.P.C. in connection with Paralakhemundi P.S. case No.08 of 2020 corresponding to G.R. Case No.10 of 2020. The petitioner is now facing trial in S.T. Case No.36 of 2020 in the Court of the learned Additional Sessions Judge, Paralakhemundi alongwith one Chhabila Sainsa and Prabhakar Pradhan @ Nagaballi for commission of offences punishable under Sections 302/201/120-B/34 of I.P.C.

2. BLAPL No.2771 of 2020 had been dismissed by order dated 27.08.2020. BLAPL No.8794 of 2020 filed thereafter, has been permitted to be withdrawn by order dated 08.04.2021.

3. The prosecution case in brief is that one Tiki Pradhan and the deceased were members of a drama group which was managed by the petitioner. Tiki Pradhan had complained to the petitioner that the deceased was harassing her and the petitioner had asked him to stop. When he did not listen, the petitioner hatched a conspiracy with the other accused persons to kill him. On 08.01.2020, co-accused Chabila called the deceased to attend a liquor party and thereafter co-accused Chabila and co-accused Pravakar on his motorcycle took the deceased near a pond. The petitioner-Bhaskar Biswal came there with his tractor and ran over the deceased killing him on the spot. They then threw his dead body on the road and left the spot. The petitioner concealed his tractor in the jungle and spread the rumour that an unknown vehicle had hit the deceased resulting in his death and helped to complete the cremation hastily. FIR had therefore been registered against unknown persons, for commission of offences punishable under Sections 279/304-A IPC. But after rumors about role of the petitioner, started circulating in the village, the petitioner called Ganapati Pradhan, Govinda Biswal, and Balmikeswar Sainsa and confessed before them that he had killed the deceased and he offered to pay some compensation to the family of the deceased to settle the matter. A panchayat meeting was convened on the next day, where the petitioner confessed before the villagers and his confession was recorded.

4. By order dated 13.07.2022, a report had been called for from the trial court regarding status of the trial. From a perusal of the report dated 6.8.2022 of the learned Additional District and

Sessions Judge, Paralakhemundi, it is apparent that seven prosecution witnesses out of twenty five witnesses have been examined, cross-examined and discharged by the said date.

The learned counsel for the petitioner has filed the certified copy of the depositions of P.Ws. 1 to 9 examined by the prosecution.

5. Mr. Mishra, learned counsel for the petitioner has submitted that the petitioner is in custody since 10.02.2020 and co-accused, Chhabila Sainsa and Prabhakar Pradhan have been released on bail and there is no direct evidence available against the petitioner and the prosecution case is based on circumstantial evidence. The petitioner has no criminal antecedent and is a permanent resident of Paralakhemundi District for which the chances of his absconding if released on bail are bleak. He has further submitted that the petitioner has been entangled in the case on the basis of his alleged extra judicial confession made before one Gobinda Biswal (P.W.1), Ganapati Pradhan and Balmiki @ Balesh Sahinsa (P.W.2) and in the village meeting and his statement recorded under Section 27 of the Indian Evidence Act leading to recovery of his tractor. These are not enough to entail in conviction as extra –judicial confession is a weak type of evidence and statement recorded under Section – 27 of the Evidence Act can be used for a very limited purpose.

6. Mr. S.S.Pradhan, learned Additional Government Advocate opposes the prayer for bail stating that the petitioner had the motive to kill the deceased as the deceased was harassing Tiki

Pradhan who was one of the members of his Jatra Group and after getting the deceased killed by running over the tractor over him, he has given false information to the father of the deceased and other villagers that the deceased was killed in a motor accident and he has also persuaded the villagers to dispose of the dead body hastily in order to tamper with the evidence. Since trial has started and most of the witnesses have been examined, it would not proper to release the petitioner in the midst of trial as he is an influential person and will influence the witnesses.

7. Mr. S.Mishra, learned counsel for the informant has opposed the bail on earlier occasions on the same grounds. He had further submitted that the chain of circumstances are complete so far the petitioner is concerned as apart from the extra judicial confession, he also had the motive to get rid of the deceased.

8. Having heard the learned counsels and perused the case record and the depositions of the witnesses, I do not think it would be prudent at this stage to analyse the evidence of the witnesses minutely, for the purpose of granting bail as the trial is still in progress and some important witnesses are yet to be examined. But considering the fact that there is no direct evidence against the petitioner and the prosecution case is mainly based on circumstantial evidence and he is in custody since more than two years and only nine witnesses had been examined at the time of hearing the bail application, I am inclined to release the petitioner on bail.

9. Let the petitioner - Bhaskar Biswal be released on bail on such terms and conditions as may be fixed by the learned trial Court, including the following conditions :

- i.) He will not indulge in any criminal activity while on bail.
- ii.) He will not threaten or try to influence prosecution witnesses while on bail.
- iii.) He will appear in the trial court on each date it is fixed for trial.

10. The BLAPL is accordingly allowed.

11. The observations in this order have been made for the sole purpose of deciding the bail application and should not influence the trial Court in any manner.

Urgent certified copy of this order be granted on proper application.

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Savitri Ratho
Judge

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