

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.4900 of 2022

Manoj Kumar Dalei* *Petitioner

Mr. J. Sahoo, Advocate

-versus-

State of Odisha* *Opp. Party

*Mr. Debasis Biswal,
Addl. Standing Counsel*

**CORAM:
JUSTICE S.K. SAHOO**

**ORDER
28.09.2022**

Order No.

02. This matter is taken up through Hybrid arrangement (video conferencing/physical mode).

Heard learned counsel for the petitioner and learned counsel for the State.

This is an application under section 439 of Cr.P.C. in connection with Gosaninuagaon P.S. Case No.79 of 2019 corresponding to S.T. Case No. 16 of 2020 pending in the Court of learned Sessions Judge -cum- Special Judge, Ganjam, Berhampur for offence punishable under section 302 of the Indian Penal Code.

The petitioner moved an application for bail before the Court of Sessions Judge -cum- Special Judge, Ganjam, Berhampur, which was rejected on

06.04.2022.

Learned counsel for the petitioner submitted that the petitioner is in judicial custody since 16.08.2019 and his earlier bail application in BLAPL No. 5095 of 2020 was rejected as per order dated 03.02.2021 and liberty was granted to the petitioner to renew his prayer for bail after examination of the material witnesses in the learned trial Court. Learned counsel further submitted that the trial has commenced and in the meantime nineteen witnesses have been examined and none of them have supported the prosecution case and so far as the child witness Asish Dalei is concerned, he was declined by the prosecution and therefore, in view of the evidence adduced by the prosecution, the bail application may be favourably reconsidered.

It appears that during the course of hearing of the earlier bail application, learned counsel for the State placed the statement of Asish Dalei, who is a four years child of the petitioner as well as the deceased, who narrated as to how the petitioner assaulted the deceased during the mid-night and throttled her neck.

As per order dated 12.08.2022, learned counsel for the State was asked to obtain instruction as to why the star witness on behalf of the prosecution, namely, Asish Dalei was declined by the prosecution.

Today, learned counsel for the State has produced the written instruction received from the Inspector in-charge of Gosaninuagaon police station dated 22.08.2022 from which it reveals that the minor witness Asish Dalei was tested and he was not able to understand the rational questions put by the Court in the dock for which he was declined by the prosecution. It further indicates that the said witness is the only eye witness in the case and there is no other eye witness to the occurrence. The written instruction is taken on record.

Considering the submissions made by the learned counsel for the respective parties, nature of evidence adduced by the prosecution, the change in the circumstances after rejection of the earlier bail application and taking into account the period of detention of the petitioner in judicial custody, I am inclined to reconsider the prayer for bail and direct the petitioner to be released on bail.

Let the petitioner be released on bail in the aforesaid case on furnishing bail bond of Rs.50,000.00 (rupees fifty thousand) with two local solvent sureties each for the like amount to the satisfaction of the Court in seisin over the matter with further terms and conditions as the learned Court may deem just and proper including the conditions that the petitioner shall appear before the learned trial Court on each

date to which the case is posted for trial and shall not try to tamper with the pro secution evidence. Violation of any of the conditions shall entail cancellation of bail.

The BLAPL is accordingly disposed of.

Issue urgent certified copy as per Rules.

(S.K. Sahoo)
Judge

PKSahoo

