

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 226 of 2022

1. Subash Harijan

2. Mithun Suna

.... Petitioners

Mr.S.K. Dwibedi, Advocate

-versus-

State of Odisha

.... Opp.Party

Mr.Rajesh Tripathy

Addl. Standing Counsel

CORAM:

JUSTICE S.K. SAHOO

ORDER

26.07.2022

Order No.

03.

This matter is taken up through Hybrid Arrangement (Video Conferencing/Physical Mode).

In pursuance of order dated 19.07.2022, Mr. Naresh Kumar Pradhan, Inspector in-charge of Nabarangpur police station is present through virtual mode. He submitted that he joined five days back as the Inspector in-charge and henceforth, he would see that immediately case diary and other instructions are sent to the Office of the learned Advocate General.

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

This revision petition has been filed by the petitioners under section 401 of Cr.P.C. read with section

102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereafter 'J.J. Act') challenging the order dated 16.02.2022 passed by the learned Additional Sessions Judge -cum- Special Judge (Children's Court), Nabarangpur in Criminal Appeal No.03 of 2022 in rejecting their bail application in connection with J.C. No.04 of 2022 arising out of Nabarangpur P.S. Case No.19 of 2022 pending before the learned Principal Magistrate, Juvenile Justice Board, Nabarangpur for the alleged commission of offence punishable under section 302/34 of the Indian Penal Code.

Learned counsel for the petitioners submitted that the petitioners were apprehended and detained in observation home since 31.01.2022. It is further submitted that the occurrence in question took place on 09.01.2022 and the first information report was lodged on 11.01.2022 for offence punishable under section 325 of the Indian Penal Code. Subsequently, the case turned to one under section 307/34 of the Indian Penal Code and ultimately charge sheet has been submitted under section 302/34 of the Indian Penal Code. It is further submitted that the deceased died on 03.02.2022 and there are no eye witnesses to the occurrence and the circumstantial evidence is not clinching and there are no criminal antecedents against the petitioners and since the petitioner no.1 Subash Harijan is aged about sixteen years and petitioner no.2 Mithun Suna is aged about fourteen years and that there is no material on record

that their release is likely to bring them into association with any known criminal or they would be exposed to moral, physical or psychological danger or that their release would defeat the ends of justice, the learned Courts below should not have rejected the bail application of the petitioners particularly in view of section 12 of the J.J. Act. He further submitted that the petitioners may be enlarged on bail in the ends of justice.

Learned counsel for the State has produced the case diary also the social investigation report. He submitted that the petitioners along with the deceased Jogeswar Harijan were last seen while moving in a motorcycle by one Chakra Jani and they were also seen by another witness while taking liquor in the evening hours on 09.01.2022. One Naresh Kumar Bisoi has stated that the petitioners had brought a person to him in an injured condition in the evening hours on 09.01.2022 and told him that it was a case of accident and the deceased was hospitalized in a hospital on the evening hours on 10.01.2022. He further submitted that as per the post mortem report, the cause of death of the deceased was due to vestibulospinal injuries and its complication. Learned counsel for the State also placed the social investigation report from which it appears that the petitioners have become addicted to crime practice and they are also addicted to alcohol. The social investigation report produced by the learned counsel for the State is taken on record.

Considering the submissions made by the learned counsel for the respective parties, the nature of accusation against the petitioners, absence of any direct evidence, the nature of circumstantial evidence on record, young age of the petitioners, their period of detention and absence of any clinching material on record to show that the release of the petitioners is likely to bring them into association with any known criminal or be exposed to moral, physical or psychological danger or that their release would defeat the ends of justice, I am inclined to release of the petitioners on bail.

Let the petitioners be released on bail in the aforesaid case on such terms and conditions as the learned Board in seisin over the matter may deem just and proper with further conditions that:-

(i) one surety should be the family member of the petitioners,

(ii) their parents/guardians/close family members shall furnish an undertaking that the petitioners shall not be allowed to come in contact with any unsocial and criminal association and shall not be exposed to any moral, physical or psychological danger and further they shall ensure that the petitioners are not indulged in any criminal activities and they shall further ensure the presence of the petitioners during inquiry before the Board as and when required;

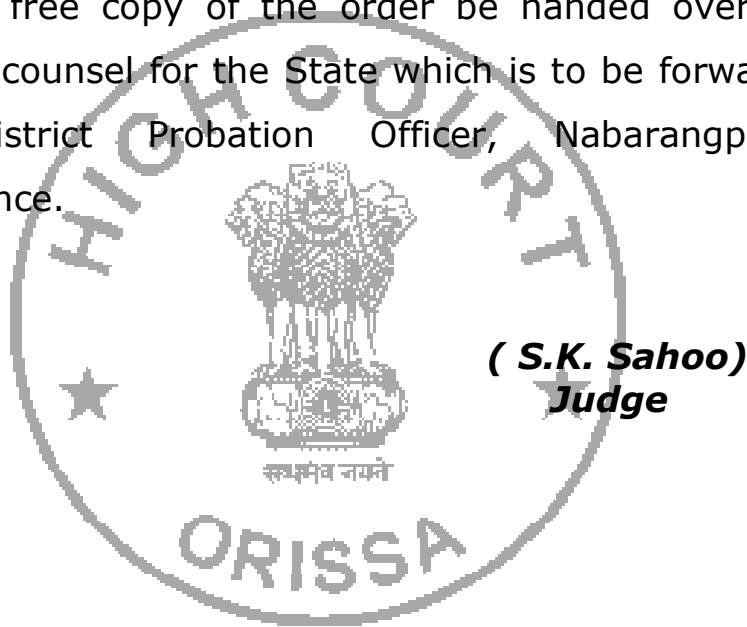
(iii) the District Probation Officer shall keep a close vigilance on the activities of the petitioners while on bail

and regularly draw his social investigation report which shall be submitted to the Board on periodical basis as the Board chooses.

Accordingly, the CRLREV is allowed and the impugned order dated 16.02.2022 passed by the learned Additional Sessions Judge -cum- Special Judge (Children's Court), Nabarangpur is hereby set aside.

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

A free copy of the order be handed over to the learned counsel for the State which is to be forwarded to the District Probation Officer, Nabarangpur for compliance.



RKM