

IN THE HIGH COURT OF ORISSA AT CUTTACK**BLAPL NO.5215 of 2022**

(In the matter of application under Section 439 of the Criminal Procedure Code, 1973.).

Niranjan Sethi ***Petitioner***
-versus-

State of Odisha ***Opposite Party***

For Petitioner : ***Mr. R.K. Pattanaik, Advocate***

For Opposite Party : ***Mr. P.K. Pattnaik, AGA***

CORAM:

JUSTICE G. SATAPATHY

ORDER
12.12.2022

Order No.
12.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).

2. This is an application U/S.439 of Cr.P.C. by the petitioner for grant of bail in connection G.R. Case No.122 of 2022 arising out of Chandbali P.S. Case No.63 of 2022 pending in the file of learned J.M.F.C., Chandbali for commission of offences punishable under Sections 363/364/302/465/471/120-B/201/34 of IPC, on the allegations that some of the co-accused persons abducted the son of the informant

on 07.02.2022, but later on he was found murdered and the investigation pursuant to the FIR lodged by the father of the deceased on 14.02.2022 allegedly revealed about the involvement of the petitioner and others in the crime for abducting the deceased and committing his murder by hatching a criminal conspiracy and harbouring the co-accused persons as well as financing the co-accused persons and arranging conveyance for them. Accordingly, the petitioner is charge-sheeted for offences punishable U.Ss.364/302/120-B/212/34 of IPC.

3. In the course of hearing of the bail application, Mr. R.K. Pattanaik, learned counsel for the petitioner submits that the petitioner is a retired Government Servant and he has not committed any crime, rather the statement of one of the proposed eye witness namely, Sarojini Sitha reveals allegation against co-accused, but not against the present petitioner. It is also submitted by him that the main allegation against the present petitioner is for conversation with the principal accused- Sarmistha Rout on numerous occasions, but even if that is taken into consideration, the conversations between them having made much before the occurrence, no criminal liability can be fastened on the petitioner. It is further submitted by him that although the prosecution has sought for to establish the conversations between the petitioner and the principal accused, but the spectrographic test reveals only

conversation between the petitioner and another co-accused namely Parameswar Rout who has been granted bail by this Court in BLAPL No.4789 of 2022 on 15.09.2022 and, thereby, such spectrographic test hardly has any relevance in this case. Learned counsel for the petitioner further submits that the deceased might have been murdered by someone else and his dead body being disposed of at a far off place in the district of Nayagarh, which was recovered pursuant to the disclosure statement of co-accused in which the petitioner has been implicated in this case for giving slap and fist blow to the deceased much before the death of the deceased, but such confession of co-accused is inadmissible in the eye of law and except this material, no incriminating material is available against the petitioner to find out any prima facie case for the crime. It is also submitted by him that none of the material collected against the petitioner being on the sound principle of law cannot be taken into consideration and the petitioner having not committed any offence, may kindly be released on bail.

4. On the contrary, Mr. P.K. Pattnaik, learned A.G.A. while opposing the bail application of the petitioner submits that the deceased- Manas Ranjan Swain was an employee of the principal accused- Sarmistha Rout and his camera was snatched away by the present petitioner who also gave slaps to the deceased and it is also established

by the materials collected by the Investigating Agency that the petitioner and the principal accused had made conversations many times before, during and after the crime at the time of disposal of the dead body of the deceased. It is also submitted by him that the petitioner had assaulted the deceased after co-accused kidnapped him and subsequently the deceased was allegedly found murdered by the petitioner and others pursuant to their conspiracy and, therefore, the petitioner being one of the principal accused, may not be granted bail.

5. After having considered the rival submissions upon reference to the materials on record, there appears no eye witness account found against the petitioner, rather the Investigating Agency has implicated the petitioner on some allegations which are mainly on the basis of confession of co-accused, spectrographic test done to establish the conversation between the petitioner and co-accused-Parameswar Rout as well as conversation between the petitioner and principal co-accused during the time of alleged crime, but such spectrographic test relates to conversation between the petitioner and co-accused-Parameswar Rout, against whom there are allegations of conspiracy and harbouring other co-accused persons under which he has been charge-sheeted for offences U/Ss.120-B/212 of IPC and said co-accused has already been granted bail by this Court on 15.09.2022 in BLAPL No.4789 of 2022. However,

since Investigating Agency relies upon the conversations between the petitioner and co-accused persons for his implication in this case but, at any rate, if such conversations, which are inadmissible in the eye of law are taken into consideration, the same do not prima facie disclose any allegation against the petitioner for committing murder of the deceased, rather the same reveals about the petitioner giving slap and fist blows to the deceased before the final spell of assault on the deceased which was allegedly taken place separately in Dayal Old-age Home (Ashram). Besides, there are statements of one witness namely Sarojini Sitha U/S.164 as well as 161 of Cr.P.C. and said witness stated to be one of the occurrence witness has vividly described about the incident and the role played by each of the co-accused, but her statement appears to be silent about the role played by the present petitioner except her acquaintance with the present petitioner and some disputes about handing over the memory chip to co-accused by the deceased. According to Investigating Agency, there is another circumstance of frequent telephonic conversations between the principal accused-Sarmistha Rout and the petitioner during, before and after the occurrence of the crime, but what was the exact conversations have not been disclosed by the Investigating Agency so far. In the aforesaid circumstance, when the object of bail is considered which is neither punitive nor preventive,

rather protecting the personal liberty of an individual during the interregnum of the pendency of the criminal case against such accused person, however, some amount of deprivation of personal liberty of the accused on grave and serious allegation in a criminal case is permissible, but such grave and serious allegation must be brought against such accused persons on the basis of prime facie accusations. Law is also well settled that bail is the rule but jail is the exception which in some cases can be resorted to on the basis of serious and grave prima facie allegation against the accused person and in such cases, the personal liberty of such accused person can be temporarily curtailed. In this case, there appears little doubt about the petitioner to be a retired Government Servant and his implication in this case not on the basis of any direct evidence, rather some circumstantial evidence which needs to be scrutinized on the principle of prima facie accusations, but these circumstance appearing against the petitioner, at this stage, of course falls short to detain the petitioner anymore, especially when charge-sheet has already been filed.

6. In view of the above discussion of facts and taking into consideration the nature of allegation against the petitioner together with materials collected so far in support of such allegation and keeping in view the status of the petitioner to be a retired Government Servant and

regard being had to the pre trial detention of the petitioner and considering the other circumstance against the petitioner in entirety and keeping in view the statement of witness-Sarojini Sitha being prima facie directed against the co-accused persons for their role in this case, this Court considers it to be a fit case to exercise the discretion U/S.439 of Cr.P.C. in favour of the petitioner.

7. Hence, the prayer for the bail of the petitioner stands allowed and the petitioner is allowed to go on bail on furnishing bail bonds of Rs.1,00,000/- (Rupees One Lakh) with two solvent sureties each for the like amount to the satisfaction of the learned Court in seisin of the case on such terms and conditions as deem fit and proper with further conditions that the petitioner shall not leave the State of Odisha without prior permission of the learned trial Court and he shall attend the trial Court on each date of posting without fail unless his attendance is dispensed with and he shall deposit his passport, if any, in the concerned trial Court and that he shall not threaten or influence any of the witnesses in any manner. Violation of any of the conditions will automatically entail the cancellation of bail.

It is also clarified that the learned trial Court may cancel the bail application of the present petitioner without further reference to the Court, if any of the above conditions and the condition imposed by such

trial Court is violated by the petitioner or otherwise a case for cancellation of bail is made out.

There is a tendency of trial Courts being influenced by the observation made in bail orders, but it is made clear that the learned trial Court in this case shall not be influenced or biased by any of the observation made in this order which is made purely at this stage to decide the present bail application.

8. Accordingly, the BLAPL stands disposed of.
9. Issue urgent certified copy of the order as per Rules.

(G. Satapathy)
Judge

Subhasmita

