

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.5303 of 2022

Gopal Gouda

....

Petitioner

Mr. S.S. Ray-2, Advocate

-versus-

State of Odisha

....

Opp. Party

*Mrs. Susamarani Sahoo,
Addl. Standing Counsel*

CORAM:

JUSTICE S.K. SAHOO

ORDER

02.12.2022

Order No.

06.

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 Gangapur P.S. Case No.182 of 2020 corresponding to S.T. Case No. 49 of 2020 pending in the Court of learned Addl. Sessions Judge, Aska for offence punishable under section 302/34 of the Indian Penal Code.

The petitioner moved an application for bail before the Court of Addl. Sessions Judge, Aska, which was rejected on 12.04.2022.

During course of argument, learned counsel for the State submitted that even though the two eye

witnesses, namely Jitendra Gouda (P.W.2) and Laxmi Swain (P.W.6) have not supported the prosecution case, but the informant Pitabas Gouda being examined as P.W. 8 stated about the dying declaration of the deceased Pintu @ Krutibasha Gouda, who was his brother and in the dying declaration, the deceased has specifically named the petitioner and one Surendra Dakua along with seven to eight others to whom he could not identify due to darkness, to be his assailants.

When a query was made to the learned counsel for the petitioner as to what happened to the co-accused Surendra Dakua, he placed the charge-sheet from which it reveals that since none of the witnesses proved the involvement of the FIR named accused Surendra Dakua, therefore, he was eliminated from the charge sheet. Learned counsel further submitted that the informant is a post occurrence witness and he went to the spot along with Bulu Bhuyan (P.W.5) in the motor cycle of the latter on the next day of the occurrence and when he tried to shift the deceased who was in an injured condition with the help of the P.W.5 to the hospital, though at that point of time the deceased stated to have made dying declaration, but the evidence of P.W.5 is completely silent in that respect. P.W.5 on the other hand has stated that he along with P.W.8 found the deceased lying in an injured condition near the tube well and the condition

of the deceased was critical and P.W.8 requested him to call for an auto-rickshaw but since no auto-rickshaw driver responded to the call, P.W.8 requested him to carry the deceased in his motor cycle to which he agreed and took the deceased to his house and after dropping the deceased and P.W.8 at their house, he went to his house. Learned counsel for the petitioner further contended that in view of absence of any statement relating to the dying declaration in the evidence of P.W.5, it is very difficult to place reliance on the evidence of P.W.8 in that respect and particularly when the eye witnesses have not supported the prosecution case. The earlier bail application of the petitioner in BLAPL No. 3321 of 2021 was rejected as per order dated 25.10.2021 and liberty was granted to renew his prayer for bail after examination of the eye witnesses and the petitioner is in judicial custody since 06.07.2020 and therefore, the bail application of the petitioner may be favourably reconsidered.

Learned counsel for the State was asked to obtain instruction about the criminal antecedents against the petitioner, if any. She submitted that the petitioner has got no criminal antecedents.

Considering the submissions made by the learned counsel for the respective parties, the change in the circumstances after rejection of the earlier bail application, the fact that the eye witnesses to the

occurrence being examined as P.W.2 and P.W.6 have not supported the prosecution case, the dying declaration aspect which has been deposed to by the informant P.W.8 is not getting corroboration from P.W.5 who accompanied him to the spot and further taking into account the progress of trial so far and 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 prosecution 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