

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 4435 of 2021

Dhabala Harijan

.... ***Petitioner***
Ms. N. Afreen, Advocate

Versus

State of Odisha

.... ***Opposite Party***
Mr. S.S. Pradhan, A.G.A.

CORAM:
JUSTICE SAVITRI RATHO

ORDER
15.02.2022

Order No.

- 04.
1. This matter is taken up through hybrid mode.
 2. Heard Ms. N. Afreen, learned counsel for the petitioner and Mr. S.S. Pradhan, learned Addl. Govt. Advocate for the State.
 3. This is an application under Section 439 of Cr.P.C. for grant of bail to the petitioner- Dhabala Harijan in connection with B. Singhpur P.S. Case No.104 of 2020 corresponding to G.R. Case No. 224 of 2020 pending in the Court of the learned J.M.F.C., Borigumma for commission of offence punishable under Section 302/34 of the IPC.
 4. The petitioner had moved an application for bail before the Court of learned Addl. Sessions Judge, Jeypore which was rejected on 02.06.2021.
 5. The prosecution allegations in brief are that Budu Harijan and Ghasia Harijan along with three to four other persons had come to the house of the informant and enquired about his son Bhaga Harijan (deceased). The informant told them that his son has gone to village Dandabada and has not returned. They all went away and after sometime they brought his son in an unconscious state and left him in his house. Due to odd hour and unconsciousness of his son,

the informant could shift his son in the morning hours of 28.09.2020 to Kumuli hospital. After preliminary treatment the deceased regained his sense and told that he had been assaulted by the accused persons and while being shifted to CHC, Borigumma, for further treatment, he died on the way.

6. Ms. Afreen, learned counsel for the petitioner submits that the petitioner is in judicial custody since 11.01.2021 and charge sheet has already been submitted in this case. She further submits that the co-accused persons namely Ghasiram Harijan in BLAPL No.4711 of 2021 and Mangaldan Harijan in BLAPL No.186 of 2021 have been granted bail by this Court and the petitioner stands on a better footing than them as he has not been named in the FIR. He has been implicated subsequently in the statement recorded under Section 161 of Cr.P.C. She further submits that even if the dying declaration is relied upon, the deceased has allegedly told the informant that he was assaulted by slaps, kicks and fists blows and it is the prosecution case that the accused persons brought the deceased and left him in the house in an injured condition and they had no intention to kill him and he died because of lack of proper treatment.

7. Mr. Pradhan, learned Addl. Govt. Advocate for the State opposed the prayer for bail and stating that all the accused persons have assaulted the deceased which resulted in his death and the deceased has sustained a hematoma in the head and abrasions in the neck region as well as the abrasion over lateral occipital region and abrasion of the left arm.

8. Perusal of the FIR reveals that the deceased was not taken to hospital in the night, although he had suffered injuries and was taken in the next day morning to the hospital and during course of treatment, he expired in the hospital and the cause of death has

been opined to be secondary cardio respiratory arrest due to hematoma in the brain. Co-accused persons have been released on bail.

9. Considering the submissions of learned counsel for the respective parties, the nature of accusation against the petitioner, the fact that the co-accused persons have been released on bail in BLAPL No.4711 of 2021 and BLAPL No.186 of 2021 and the period of detention of the petitioner in judicial custody, I am inclined to allow this application for bail.

10. Let the petitioner- Dhabala Harijan be released on bail on such terms and conditions as may be fixed by the learned Court below in seisin over the matter, 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 remain present on each date the case is fixed for trial.

11. Violation of any condition will entail in cancellation of bail.

12. The BLAPL is accordingly disposed of.

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

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(Savitri Ratho)
Judge

Sukanta