

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.5420 of 2022

Ashok Rout @ Bhika **Petitioner**

Mr. S.K. Jena, Advocate

-versus-

State of Odisha **Opp. Party**

*Mr. Manoranjan Mishra,
Addl. Standing Counsel*

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

**ORDER
29.07.2022**

Order No.

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

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

This is an application for bail under section 439 of Cr.P.C. in connection with Dhamnagar P.S. Case No.03 of 2020 corresponding to S.T. Case No. 59 of 2020 pending in the Court of learned Sessions Judge, Bhadrak for alleged commission of offences under sections 302, 201/34 of the Indian Penal Code.

The prayer for bail of the petitioner has been rejected by the learned Sessions Judge, Bhadrak by order dated 18.05.2021.

Learned counsel for the petitioner submitted that the petitioner is in judicial custody since 09.01.2020 and the earlier bail application of the petitioner in BLAPL No. 1590 of 2021 has been rejected as per order dated 22.03.2021 relying on the statements of two eye witnesses, namely, Madan Mohan Nayak

and Suresh Sahoo and liberty was given to the petitioner to renew his prayer for bail after examination of the aforesaid two eye witnesses in the learned trial Court. Learned counsel further submitted that the aforesaid two witnesses have already been examined in the learned trial Court and eye witness Suresh Sahoo did not say anything to have seen the assault on the deceased and so far as eye witness Madan Mohan Nayak is concerned, even though in the examination in chief, he stated that on the focus of torch light, he saw the petitioner and deceased quarrelling and the petitioner was assaulting the deceased and then he returned home and on the next day morning, he came to know about the death of the deceased but in the cross-examination, the said witness has stated that there was push and pull between the deceased with the petitioner for about two to three minutes and thereafter, he returned back and he heard about dealing of two blows. It is contended by the learned counsel for the petitioner that in view of such evidence of eye witness of Madan Mohan Nayak, it cannot be said that he is a truthful witness and eye witness to the occurrence and in view of the period of detention of the petitioner in judicial custody and progress of the trial and since the material witnesses have already been examined, the bail application of the petitioner may be favourably reconsidered.

Learned counsel for the State opposed the prayer for bail and placing the evidence of P.W.1 Madan Mohan Nayak submitted that at this stage, it would not be proper to give opinion about the acceptability of the evidence of P.W.1 which would be adjudicated by the learned trial Court at the appropriate stage.

Considering the submissions made by the learned counsel for the respective parties, the nature of evidence adduced so far in the trial Court by the prosecution, the period of detention of the petitioner in judicial custody and the change

in the circumstances after rejection of the earlier bail application, 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 subject to conditions that the petitioner shall appear before the learned trial Court on each date when the case would be posted for trial and shall not indulge in any criminal activities and shall not try to tamper with the evidence.

Violation of any terms and conditions shall entail cancellation of bail.

The BLAPL is accordingly disposed of.

Issue urgent certified copy as per Rules.

