

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.5058 of 2021

Bhelu @ Ananta Prasad Jena

.... ***Petitioner***
M/s. D.K.Sahoo, Advocate

-versus-

State of Orissa

.... ***Opp. Party***
M/s. P.K.Patnaik, A.G.A.
Mr.S.P.Mishra, Advocate
for informant

CORAM:

JUSTICE G. SATAPATHY

ORDER

24.09.2022

Order No.

10. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. The petitioner named above has invoked the jurisdiction of this Court by this application U/S. 439 of Cr.P.C. for his release on bail in connection with Marsaghai P.S. Case No.229 of 2019 corresponding to G.R. Case No.1413 of 2019, which after commitment registered as S.T. Case No. 41 of 2020 pending in the file of learned District and Sessions Judge, Kendrapara for commission of offence punishable U/Ss. 302/120-B of IPC read with Section 25/27 of the Arms Act. on the allegation of taking away the life of deceased Gaganbihari Sahu by firing from a pistol after hatching a conspiracy with co-accused persons.
3. Heard learned counsel for the petitioner as well as learned counsel for the State so also learned counsel appearing for the informant.
4. In the course of hearing of the bail application, learned counsel for the petitioner by way of placing facts of the case elaborately and in great detail submits that the petitioner has been detained in custody since 04.10.2019 and he has been falsely implicated in this case and that there is dearth of direct evidence against the petitioner to hold him liable for murder of the deceased and that all the criminal antecedents shown against

the petitioner except the excise case, are after the arrest of the petitioner from his house. It is also submitted that the F.I.R. was registered against un-known person and no one has seen the petitioner firing at the deceased and no weapon of offence has been recovered from the possession of the petitioner at any point of time and the petitioner has been implicated in this case due to prior enmity with the informant's group. It is also submitted that even after three years of the custody of the petitioner, no trial has commenced and co-accused persons standing on similar footing or graver footing have already been granted bail by this Court in different BLAPLs and the petitioner thereby, should be enlarged on bail at least on the principle of parity. Learned counsel for the petitioner files some bail orders passed by this Court in support of his contention for release of co-accused persons on bail.

5. On contrary, while opposing the bail application of the petitioner, learned counsel for the State by placing the statement of witness Chandan Jena submits that the witness has seen the occurrence and the said Chandan Jena has stated in his statement U/S. 161 of Cr.P.C. that the petitioner had fired at the deceased from a pistol by sitting on a motor cycle as a pillion rider which was being driven by another co-accused and the petitioner having criminal antecedents of serious nature should not be granted bail.

6. Learned counsel for the informant by placing a threadbare of facts of the case submits that co-accused persons released on bail never stand on similar footing with the present petitioner and he by placing the observations of this Court in the orders granting bail, submits further that this Court while granting bail has taken into consideration the absence of co-accused from the spot as well as the allegation of shooting at the deceased by firearm being directed against the petitioner and absence of criminal antecedent against such co-accused persons. It is further submitted by him that since one of the witness as stated by learned counsel for the State had seen the petitioner firing at the deceased causing his death and the petitioner having criminal antecedents of serious nature in different cases of Kendrapara district should not be considered for bail.

7. After having considered the rival submissions upon perusal of allegations on record, there appears allegation against the petitioner for firing at the deceased and there are some criminal antecedents against the petitioner for offence U/S. 307 of IPC read with Section 25/27 of the Arms Act. It is no doubt true that the petitioner is in custody since some time but the petitioner cannot be granted bail solely on the ground of detention for some time, especially when the allegation levelled against him is so serious and grave and that too for murder of a person. A careful perusal of copy of orders produced by the parties in this case would go to indicate grant of bail to co-accused Sayan Kumar Jena and Khirod Kumar Swain in BLAPL No. 1563 of 2020, Bangan @ Santosh Kumar Swain in BLAPL No. 10103 of 2019 and four co-accused petitioners in BLAPL Nos. 10369/2019, 10490/2019, 965/2020 and 6870/2020 and refusal of bail to co-accused Litu @ Purnachandra Sahu in BLAPL No. 10719/2019 and Mituna @ Pravat Nayak in BLAPL No. 10179/2019. A mindful conspectus of these orders makes it very clear that this Court while rejecting the bail applications of co-accused Litu @ Purnachandra Sahu and Mituna @ Pravat Nayak has taken into consideration materials on record for alleged presence at the spot as well as criminal antecedents and statement of witnesses including the informant, whereas grant of bail to co-accused persons named above are on consideration of specific nature of allegation, period of detention, absence from the spot and release of co-accused on bail, but the petitioner against whom the main allegation of firing at the deceased from the firearm is directed cannot be equated with similarly circumstanced co-accused released on bail, rather the bail applications of other co-accused having rejected on the grounds of presence at the spot and criminal antecedents disentitled the petitioner to bail.

8. In view of the above facts and taking into consideration the surrounding circumstance of the commission of the murder of the deceased and taking into consideration the statement of the witness Chandan Jena coupled with the severity of allegation raised against the petitioner and the punishment that would entail the conviction of offence

coupled with facts narrated above, this Court considers it undesirable to admit the petitioner to bail. Accordingly, the prayer for bail of the petitioner stands rejected.

9. At this point, learned counsel for the petitioner submits for expeditious disposal of the case. In view of such submission, the learned trial Court is requested to expedite the trial and make all endeavour to dispose of the case as expeditiously as possible.

10. Accordingly, the BLAPL stands disposed of.

11. Urgent certified copy of the order be granted on proper application.

Kishore

