

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.5186 of 2021

Jaga @ Jagannath Behera Petitioner

Mr.A.P. Bose, Advocate

-versus-

State of Odisha Opp. Party

*Mr.Manoranjan Mishra,
Addl. Standing Counsel*

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

**ORDER
22.07.2022**

Order No.

03. The 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. for grant of bail to the petitioner in connection with Badabazar P.S. Case No.93 of 2017 corresponding to S.T. Case No.35 of 2018 pending in the Court of learned 3rd Addl. Sessions Judge, Berhampur for alleged commission of offences under sections 326, 307, 302, 120-B, 147, 148, 149, 147 of the Indian Penal Code, section 25(1-B)(b) of the Arms Act and sections 3 and 4 of Explosive Substance Act.

The petitioner moved an application for bail before the Court of 3rd Addl. Sessions Judge,

Berhampur which was rejected on 09.06.2021.

Learned counsel for the petitioner submitted that the petitioner is in judicial custody since 13.07.2017 and on account of delay in disposal of the case, the petitioner was granted interim bail for three months in BLAPL No. 5272 of 2020 as per order dated 18.11.2020 and after availing the interim bail period, he surrendered at right time and he has never misutilized the liberty.

A submission was made on 24.06.2022 that out of twenty charge sheet witnesses, nine witnesses have already been examined and they have not supported the prosecution case, but the learned counsel for the State on verification of the case diary submitted that Santosh Kumar Patra is another material witness, who is yet to be examined and accordingly, order was passed for examination of the said witness and the Inspector in-charge of Badabazar police station was asked to produce the eye witness in the learned trial Court on receipt of the summons from the learned trial Court.

Today, learned counsel for the petitioner has produced the deposition copy of Santosh Kumar Patra, who was examined as P.W.11 and on perusal of the same, it appears that though the said witness has supported the prosecution case, but he has named seven persons to be assailants of the deceased and the name of the petitioner does not find place in his

evidence. It is contended by the learned counsel for the petitioner that since there is no material on record that the petitioner has also participated in the assault of the deceased in spite of the fact that all the material witnesses to the prosecution have been examined in the trial Court, keeping in view the period of detention of the petitioner in judicial custody and his conduct in surrendering before the learned trial Court at right time after availing the interim bail period, he may be granted bail.

Learned counsel for the State does not dispute that the witnesses examined so far have not stated anything against the petitioner.

Considering the submissions of the learned counsel for the respective parties, nature of evidence adduced by the prosecution during trial so far, the period of detention of the petitioner in judicial custody, the conduct of the petitioner in complying with the earlier order of interim bail and further taking into account the progress of trial so far, I am inclined to reconsider the prayer and direct release of the petitioner on bail.

Let the petitioner be released on bail in the aforesaid case on furnishing bail bond of Rs.50,000/- (rupees fifty thousand) with two local solvent sureties each for the like amount to the satisfaction of the learned Court in seisin over the matter with further 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 would be posted for trial and shall not try to tamper with the evidence. Violation of any of the conditions shall entail cancellation of bail.

BLAPL is accordingly disposed of.

Issue urgent certified copy as per Rules.

(S.K. Sahoo)
Judge

PKSahoo

