

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 6513 of 2022

Gagaraj Meher & Another ***Petitioners***

Mr. B.C. Ghadei, Advocate

-versus-

State of Odisha ***Opposite Party***

Mr. K.K. Gaya, ASC

CORAM: JUSTICE V. NARASINGH

ORDER
29.11.2022

Order No.

04.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioners and learned counsel for the State.
3. The petitioners are accused in connection with G.R. Case No.360 of 2010, pending in the Court of the learned Sessions Judge, Khordha, Nuapada, arising out of Khariar P.S. Case No.201(21) of 2010, for alleged commission of offences under Section 302/34 of IPC.
4. Being aggrieved by the rejection of their application for bail U/s.439 Cr.P.C. by the learned Sessions Judge, Nuapada, by order dated 05.07.2022 in the aforementioned case, the present BLAPL has been filed.
5. It is submitted by the learned counsel that the petitioner No.1 & 2 are in custody since 11.06.2022 and 13.06.2022 respectively.

6. It is apt to note here that in the case at hand, the petitioners were cited as accused for causing the death of one Bailochan Meher. After investigation, final form was submitted as mistake of fact under Section 302/34 of IPC.

7. When the complainant filed protest petition, an enquiry was conducted by the learned J.M.F.C., Khariar and on 01.02.2015 cognizance under Section 302/34 of IPC was taken against both the accused persons.

8. It is apposite to state here that this Court by order dated 13.02.2020 in ABLAPL No.946 of 2020, directed the petitioners to surrender before the Court in seisin within three weeks. But since the accused petitioners did not surrender within the stipulated period, NBW(A) was issued against the petitioners-accused and consequentially they were taken into custody.

9. This Court called for the LCR. The same has been placed on record.

10. Learned counsel for the petitioners submits that the witnesses have given prevaricating statement. In as much as, during the earlier investigation, none of them said to have seen the occurrence whereas before the learned Court in course of 202 Cr.P.C. enquiry, they have improved upon it and therefore, the same ought not to be taken into consideration.

11. Learned counsel for the State opposes the prayer for bail, inter alia, on the ground that cognizance having been taken on the basis of the statements recorded in the proceeding at the behest of the complainant, petitioners ought not to be released on bail.

12. This Court perused the statements of one Sahadev Meher, eye witness. He categorically stated that the deceased had picked up a fight with both the accused persons and it is his further

submission that the accused-petitioner No.1 was throttling the neck of the deceased while the other accused was sitting on the abdomen area of the deceased.

13. The post mortem report deals with the detailed description of the injuries of deceased. It has been clearly stated that there are fracture injury on the neck and the presence of faecal materials around the anus and cloths, which is a clear pointer to the fact that the deceased was throttled to death.

14. Considering the gory manner in which the deceased has been done to death by the petitioners, which is clearly borne out from the statement of the eye witness Sahadev Meher, this Court is **not inclined** to consider the bail application of the petitioners at this stage. The same accordingly stands rejected.

15. Since the petitioners are in custody since 13.06.2022, learned Court in seisin is called upon to conclude the trial within the period of four months from the date of receipt/production of the copy of this order. In the event trial is not concluded within the time stipulated, it shall be open to the petitioners to renew their prayer.

16. Registry is requested to do the needful.

17. Accordingly, the BLAPL stands disposed of.

(V. NARASINGH)
Judge

Ayesha