

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 6820 of 2022

***Raja @ Subhranshu Sekhar
Ratha @ Subhransu Sekhar
Rath***

Petitioner

Mr. S. Dwibedi, Advocate

-versus-

State of Odisha

Opposite Party

Mr. A. Pradhan, ASC

CORAM: JUSTICE V. NARASINGH

**ORDER
23.11.2022**

Order No.

05.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the informant.
3. The petitioner is an accused in connection with S.T. Case No.15 of 2021 corresponding to G.R. Case No.1663 of 2019, pending on the files of the learned 1st Additional Sessions Judge, Cuttack, arising out of Barang P.S. Case No.150 of 2019, for alleged commission of offences under Section 302 of IPC.
4. Being aggrieved by the rejection of her application for bail U/s.439 Cr.P.C. by the learned 1st Additional Sessions Judge, Cuttack, by order dated 12.07.2022 in the aforementioned case, the present BLAPL has been filed.
5. It is submitted by the learned counsel for the petitioner that the petitioner is in custody since 20.09.2019 and since trial has commenced and as material witnesses have not supported the

prosecution, his further continuance in custody is unwarranted, more so when the entire accusation is based on last seen theory and the witnesses to such last seen theory have not supported the prosecution. In this connection, the learned counsel for the petitioner places on record the statements of P.Ws.4 & 5.

6. Learned counsel for the State opposes the prayer for bail inter alia on the ground that as trial has commenced and other witnesses are yet to be examined, it is not advisable as per the settled position of law to evaluate the materials on record.

7. The statement of witnesses examined so far has to be examined, keeping in view the salutary principle on which the learned counsel for the State relied upon.

8. To prove the last seen theory, P.Ws.4 & 5 were cited as witnesses on behalf of the prosecution.

9. On perusal of the statements of P.Ws.4 & 5, it is seen that they have not supported the prosecution. Apart from the said statement, there is no other material to link the present petitioner with the alleged crime.

10. It is worthwhile to note here that the prosecution tried to drive home the charge relying on the statements recorded under Section 27 of the Evidence Act and the witnesses to the said effect are P.Ws.1 & 7. P.W.7 has not supported the prosecution and has turned hostile and so far as P.W.1 is concerned, on going through the recitals of the said witness, it is nowhere indicated that the accused gave recovery of the weapon of offence.

11. Since trial is continuing, any further analysis of the statement of P.W.1, will prejudice the prosecution. Hence, this Court refrains from making any observation in the said regard.

12. Prima facie considering that the witnesses to the last seen theory have not supported the prosecution and one of the witnesses to the statement under Section 27 of the Evidence Act has also resiled, and it is also stated at the bar that the petitioner is suffering from cancer and in fact undergone surgery, as fairly stated by the learned counsel for the State on instructions.

13. Though it has come to the fore that the petitioner's health condition is stable. This Court is persuaded, taking into account the health condition of the petitioner and the statement of the witnesses as discussed above, to direct the release of the petitioner.

14. Learned trial Court to fix the terms so as to ensure the presence of the petitioner on each date of trial.

15. The depositions of the P.Ws.1 to 10, is taken on record.

16. Accordingly, the BLAPL stands disposed of.

17. Urgent certified copy of this order be granted as per rule.

(V. NARASINGH)
Judge

Ayesha