

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 6837 of 2022

Dilu @ Krushna Chandra Patra

Petitioner

Mr. A. Das, Advocate

-versus-

State of Orissa

....

Opposite Party

Mr. P.K. Maharaj, ASC

CORAM: JUSTICE V. NARASINGH

ORDER

16.12.2022

Order No.

04.

1. Heard learned counsel for the petitioner and learned counsel for the State.
2. The petitioner is an accused in connection with G.R. Case No.68 of 2017, pending in the Court of the learned Adhoc Additional District & Sessions Judge (FTSC) under POCSO Act, Berhampur, Ganjam, arising out of Digapahandi P.S. Case No.76 of 2017, for alleged commission of offences under Sections 363/302//201/376(2)(i)(n) of IPC read with Section 6 of POCSO Act read with Section 3 of Child Marriage Resolution Act.
3. Being aggrieved by the rejection of his application for bail U/s.439 Cr.P.C. by the learned Adhoc Additional District & Sessions Judge (FTSC) under POCSO Act, Berhampur, Ganjam, by order dated 08.07.2022 in the aforementioned case, the present BLAPL has been filed.

4. It is submitted by the learned counsel that the petitioner is in custody since 19.05.2017, the occurrence took place on 14.05.2017 and the FIR was lodged on 17.05.2017.

5. It is the positive case of the learned counsel for the petitioner that since trial has commenced, even if the entire evidence on record is taken into account, there is no materials to connect the petitioner with the alleged crime. Hence, his further continuance in custody is unwarranted.

6. Learned counsel for the State opposes the prayer for bail inter alia on the ground that this is the second journey of the petitioner to this Court and there is no changing circumstance in fact the circumstances are rather more incriminating.

7. Learned counsel for the petitioner placed on record the deposition of the informant P.W.3, the sister of the deceased P.W.4 and of the doctor P.W.7.

8. Referring to the deposition of P.W.3, it is stated that there is no allegation against the present petitioner by the most interested witness. Hence, the petitioner's continuance in custody is unwarranted.

9. It is also stated with vehemence, referring to the evidence of P.W.7 doctor, that he has stated that there was no fingerprint mark on the neck of the deceased in cross-examination, his statement in examination-in-chief that "Death was due to combine systemic effects of poisoning as well as compression of neck leading to asphyxia" cannot be taken into account.

10. It is the cardinal principal of criminal jurisprudence that during pendency of trial before the learned Court in seisin, this Court ought not to make any clinical analysis of evidence on record.

11. Be that as it may, since the learned counsel for the petitioner insists upon the evaluation of the materials and urges false implication, this Court proceeds to analyze the materials on record with the caveat that the analysis made hereunder is only for the purpose of bail and the trial Court ought not to be prejudiced by the same while considering the materials qua the accused which shall be taken into account on its own merits.

11(a). On perusal of the deposition of P.W.3-the mother and the deposition of P.W.4 her daughter and the sister of the informant, it is seen that there are materials to indicate that on the fateful day, the petitioner was in the house along with his wife since deceased.

11(b). The medical evidence as stated by the doctor-P.W.7 in paragraph-3 of examination in chief under the heading opinion also indicates the cause of death being poisoning and asphyxia.

11(C). It is the opinion of the doctor under heading (i) that the external injuries nos. i and ii with their corresponding internal injuries are suggestive of compression or constriction of the neck and sufficient to cause death in ordinary course of nature has remain unchallenged in cross-examination.

12. Hence, on a consideration of the evidence on record and as rightly submitted by the learned Public Prosecutor that there are no changing circumstances, this Court is **not inclined** to entertain this bail application.

13. Accordingly, the BLAPL stands rejected.

(V. NARASINGH)
Judge

Ayesha