

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 7196 of 2022

Charan Naik

....

Petitioner

Mr. D.K. Mohanty, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. K.K. Gaya, ASC

CORAM: JUSTICE V. NARASINGH

ORDER

22.12.2022

Order No.

03.

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.624 of 2022, pending in the Court of the learned S.D.J.M., Keonjhar, arising out of Ghatagaon P.S. Case No.76 of 2022, for alleged commission of offences under Section 302 of IPC.
3. Being aggrieved by the rejection of his application for bail U/s.439 Cr.P.C. by the learned Additional Sessions Judge-cum-Special Judge (Vig), Keonjhar, by order dated 12.07.2022 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 22.04.2022 and charge-sheet has been filed on 12.06.2022, hence further continuance of the petitioner in custody is unwarranted.

5. It is the case of the petitioner that the incident occurred out of altercation on account of the petitioner talking in a loud voice on a mobile phone, while the deceased was taking his food.

6. It is the case of the petitioner that initially, the deceased attacked the petitioner thereafter out of fit anger on the spur of moment, he picked up a bamboo stick which was lying there and dealt the blow on the head, to the which the deceased succumbed next day in the morning in his own house.

7. It is the submission of the learned counsel for the petitioner that if the deceased had been taken to the hospital, this unfortunate casualty would not have been happened and even if the entire prosecution allegation is accepted at its face value, no case under Section 302 of IPC is made out and keeping in view the age of the petitioner being 23 years, he seeks release.

8. To fortify his stand that the present petitioner was assaulted, he relies on his injury report.

9. Learned counsel for the State opposes the prayer relying on the statement of one Krushna Chandra Naik son of the deceased and informant who is an eye witness and submits that it's a case of one grossly exceeding the limits of self defence and hence the manner in which the assault was made, the petitioner ought not to be released on bail.

10. This Court perused the post mortem report and the injury report of the present petitioner and the statement of the eye witness Krushna Chandra Naik, which reveals that the incident happened on the spur of the moment without any premeditation though no doubt the accused has to be held responsible for his own act.

11. Considering the manner in which the assault took place, the period of custody, filing of charge-sheet and the accused petitioner being the first offender, this Court directs the petitioner to be released on bail on such terms to be fixed by the learned Court in seisin.

12. Accordingly, the BLAPL stands disposed of.

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

(V. NARASINGH)
Judge

Ayesha

