

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 7343 of 2022

Niranjan Behera

.... Petitioner

Mr.S.R. Mulia, Advocate

-versus-

State of Odisha

.... Opp.Party

Mr.Arupananda Das

Addl. Government Advocate

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

**ORDER
11.11.2022**

Order No.

04. This matter is taken up through Hybrid arrangement (video conferencing/physical mode).

Heard learned counsel for the petitioner and learned counsel for the State. सत्यमेव जयते

This is an application under section 439 of Cr.P.C. for grant of bail to the petitioner in connection with Baranga P.S. Case No.194 of 2018 corresponding to S.T. Case No. 15 of 2020 pending in the Court of learned 2nd Addl. Sessions Judge, Cuttack for alleged commission of offences under section 302 of the Indian Penal Code read with section 25(1-B)/27 of the Arms Act.

The petitioner moved an application for bail before the Court of learned Addl. Sessions Judge, Cuttack, which was rejected on 18.07.2022.

Learned counsel for the petitioner submitted that the petitioner is in judicial custody since 02.12.2018 and he was charge sheeted under section 302 of the Indian Penal Code read with section 25(1-B)/27 of the Arms Act. It is further submitted that the first bail application of the petitioner in BLAPL No. 1964 of 2019 was rejected as per order dated 10.07.2019 relying on the version of two eye witnesses, namely, Ajay Karan and Nitish Kumar. It is further submitted that in the meantime the trial has already commenced and the aforesaid two witnesses have been examined in the learned trial Court as P.W.1 and P.W.3 and they have failed to identify the petitioner in the dock. It is further submitted that since there is no substantive evidence against the petitioner in connection with murder of the deceased and in view of the change in the circumstances, the bail application of the petitioner may be favourably reconsidered. Learned counsel for the petitioner has annexed the deposition copies of the above two eye witnesses to the bail application.

Learned counsel for the State on the last date took time to verify the case records as to whether there are any other material witnesses left out to be examined in the learned trial Court or not.

Mr. Das, learned Addl. Government advocate for the State on verification of the case records fairly submitted that the aforesaid two eye witnesses are the material witnesses.

Considering the submissions of the learned counsel for the respective parties, since the eye witnesses have failed to identify the petitioner in the learned trial Court and there is no substantive evidence against the petitioner, the change in the circumstances after rejection of the earlier bail application and further taking into account the period of detention of the petitioner in judicial custody, I am inclined to reconsider the prayer for bail and direct release 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 such terms and conditions as the learned Court may deem just and proper including the conditions that the petitioner shall not indulge in any criminal activities, shall appear before the learned trial Court when the case would be posted for trial and shall not try to tamper with the prosecution witnesses. 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

