

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.6576 of 2021

Kartik Bhoi

.... ***Petitioner***
Mr.S.K.Jena, Advocate

-versus-

State of Odisha

.... ***Opposite Party***
Mr. K.K.Nayak, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

04.03.2022

Order No.

03.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner as well as the learned Additional Standing Counsel for the State.
3. This is an application under Section 439 of the Criminal Procedure Code filed by the Petitioner to release him on regular bail in connection with G.R.Case No.126 of 2021 pending in the Court of the learned J.M.F.C., Gondia, which arises out of Gondia P.S.Case No.89 of 2021 for commission of the alleged offences under Sections 498-A, 304-B, 302/34 of the Indian Penal Code read with Section 4 of the Dowry Prohibition Act.
4. Learned counsel for the Petitioner submits that the Petitioner is the husband of the deceased Dipa @ Sakjmmn smita Bhoi and he is in judicial custody since 02.04.2021. It is further submitted by the learned counsel for the Petitioner that the marriage of the deceased with the present Petitioner was solemnized on 15.05.2016 and they

were having two small kids. It is also submitted by him that on 23.03.2021 while the deceased was preparing food, the kerosene pressure stove brushed, as a result of which the deceased sustained burn injuries and she died at the spot. It is further submitted that the Scientific officials also visited the spot and their findings as per the spot visit note also indicate that the burnt domestic kerosene pressure stove and other materials available at the spot suggest that it is a case of accidental death of the deceased, but without any proper investigation, charge sheet has been submitted under Section 304-B and 306 of the Indian Penal Code and therefore, the bail application of the Petitioner may be favourably considered.

5. Learned counsel for the State, on the other hand, has produced the case diary and placed the statement of Kulamani Bhoi as well as the post mortem report findings, which indicate that the cause of death was due to shock, as a result of complete burn of whole body, which was almost 100%. He also placed the spot visit report of the scientific team from which it appears that intense kerosene smell was coming out from the room where the dead body of the deceased was lying and one burnt domestic kerosene pressure stove and its pump piston missing was noticed adjacent to the deceased near the northern side wall of the room and burnt debris were found lying scattered on the cemented floor of the room and the soot particles were found deposited on the roof, walls of the room, inner side of the entrance wooden door and inner side the iron sheet leafs of the windows and other household wall and the plastic containers present on the northern wall shelves were also burnt.

6. In the case of **Kunhibadulla and others-vrs.-State of Kerala reported in (2004) 4 Supreme Court Cases 13**, it has been held that a conjoint reading of Section 113-B of the Evidence Act and

Section 304-B of Indian Penal Code shows that there must be material to show that soon before the death, the victim was subjected to cruelty or harassment and the prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of “death occurring otherwise than in normal circumstances.”

7. Therefore, the contention of the learned counsel for the Petitioner has some force.

8. Having heard learned counsel for the parties and considering the fact that the Petitioner is in custody since 02.04.2021 and that Charge sheet has been filed under section 306 of the Indian Penal Code and in absence of any direct materials implicating the Petitioner in the alleged crime, I am inclined to release the Petitioner on bail in the aforesaid case on furnishing a 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 and further terms and conditions as would be deemed fit and proper in the facts and circumstances of the case shall be fixed by the Court in seisin over the matter.

10. With the aforesaid observation the BLAPL stands disposed of.

11. Urgent certified copy of this order be granted on proper application.

RKS

(A.K. Mohapatra)
Judge