

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 7695 of 2022

***Dolagobinda @ Taluchha Ashis
Mohapatra***

Petitioner

Mr. B.P. Pradhan, Advocate

-versus-

State of Odisha

.... Opposite Party

Mr. Karunakar Gaya, ASC

Mr. A. Pradhan, ASC

Mr. J. Pal, Adv (Informant)

CORAM: JUSTICE V. NARASINGH

**ORDER
15.11.2022**

Order No.

05.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned counsel for the State.
3. The petitioner is an accused in G.R. Case No.580 of 2022, pending in the file of learned S.D.J.M., Puri, arising out of Puri Town P.S. Case No.90 of 2022, for commission of alleged offences under Sections 302/120(B)/34 of IPC read with Section 25 and 27 of the Arms Act and is in custody since 21.03.2022.
4. Being aggrieved by the rejection of his application for bail U/s.439 Cr.P.C. by the learned 1st Additional District & Sessions Judge, Puri by order dated 04.08.2022 in the aforementioned case, the present BLAPL has been filed.
5. It is submitted by Mr. B.P. Pradhan, learned counsel for the petitioner that the deceased Krushna Chandra Pratihari @ Kalia succumbed to the gun shot injuries and the overt act is attributed to

the two co-accused persons Tutu @Prafulla Ku. Mohapatra and Kunmuni @ Laxman Suara.

6. On the basis of materials on record, it is submitted that there were two other co-accused Hari Panda and Baba @ Asish Mohapatra, who were present at the spot of occurrence. It is stated with vehemence that even if the entire prosecution allegation is accepted at its face value the petitioner's implication at best can be under Section 120-B of the IPC and as he is in custody since 02.03.2022 and charge sheet having been filed on 17.07.2022, his further continuance in custody is not warranted and more so when he is the first offender.

7. Learned counsel for the State Mr. A. Pradhan, ASC and Mr. K.K. Gaya, ASC as well as the informant Mr. J. Pal oppose the prayer for bail inter alia on the ground that an analysis of the entire prosecution case unerringly points to the involvement of the present petitioner and his father who conspired to take revenge against the deceased whom they perceived to be the master mind in the murder of their uncle. And, since the accused involved in the said case were acquitted to seek vengeance they designed for killing the deceased.

7(A). It is stated by the learned counsel for the State as well as the informant that there are cogent materials to establish motive for the crime.

7(B). Since investigation has been kept open, petitioner ought not to be released on bail at this stage.

8. Perused the statement of eyewitness Narasingha Panda and Pichi Kalia @ Trinath Mohanty. In both the statements, specific overt act is attributed, as rightly stated by the learned counsel for the parties, to Tutu and Kunmuni and the eye witnesses speak about

the presence of the two other co-accused namely Hari Panda and Baba.

9. On a close scrutiny of the statement of eye witness Narasingha Panda, it is seen that while referring to the overt act as committed and noted hereinabove, he has also stated that while running away from the place of occurrence they (Tutu & Kunmuni) were shouting that the desire of the present petitioner and his father, has been fulfilled.

10. It is submitted by the learned counsel for the petitioner that there is no other legally admissible material to connect the petitioner with the alleged crime except the statement of eyewitness Narasingha Panda, as noted above. Hence, his further continuance in custody is punitive.

11. Per contra, learned counsel for the State as well as the informant relied on the statements of the accused Tutu who gave recovery of the weapon of offence and ammunition, Kalu @ Satya Narayan Panigrahi who lead to recovery of Rs. 1 Lakh which was paid as the alleged contract amount out of the agreed amount of Rs.2 Lakh and that of Hari Panda who gave recovery of one Oppo Mobile Phone under Section 27 of the Evidence Act.

12. It is submitted by the learned counsel for the State as well as the informant with vehemence that the statements of the said co-accused Tutu, Kalu @ Satya Narayan Panigrahi and Hari Panda, explicitly state about the conspiracy which was hatched at the instance of the present petitioner and his father to avenge the death of one of their family members.

Hence it is submitted that at this stage, the petitioner ought not to be released on bail more so when the investigation is admittedly kept open under Section 173(8) of the Cr.P.C.

13. This Court perused the statement of the eye witnesses as noted above and the statements of the co-accused under Section 27 of the Evidence Act.

14. On analysis of the statement of the eye-witnesses along with the statement of the co-accused under Section 27 of the Evidence Act, this Court is of the prima facie view that apart from the disclosure statement of the co-accused under Section 27 of the Evidence Act on which much reliance is placed by the learned counsel for the State and the statement of witness Narasingha Panda, who heard the shouting of the co-accused that the desire of the present petitioner and his father has been fulfilled, there is no other material to connect the present petitioner with the alleged crime.

15. At this stage, it would be apposite to extract Section 27 of the Indian Evidence Act, 1872;

“27. How much of information received from accused may be proved.- Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

The evaluation of the statement made under Section 27 of the Evidence Act had engaged the attention of the apex Court recently in the case of ***Venkatesh @ Chandra & Another vs. State***

of Karnataka reported in **2022 SCC Online SC 765** and in the case of *Shahaja @ Shahajan Ismail Mohd. Shaikh vs. State of Maharashtra* reported in **2022 SCC OnLine SC 883**.

Referring to “locus classicus” relating to the manner of construing section 27 of the Evidence Act in the case of *Phulukuri Kottaya v. Emperor, AIR (1947) PC 67* the apex Court had cautioned against the “tendency on the part of the prosecuting agency in getting the entire statement recorded rather than only that part of the statement which leads to the discovery of fact”.

The apex Court further observed that because of the same “a confession of an accused which is otherwise hit by the principles of Evidence Act finds its place on record. Such kind of statements may have a direct tendency to influence and prejudice the mind of the Court. This practice must immediately be stopped”. Ref- Para-19 of Venkatesh @ Chandra (Supra)

16. If considered on the touchstone of the law laid down in the aforementioned cases relating to evaluation of statement(s) under Section 27 of the Evidence Act, the so-called disclosure statement of the co-accused does not in any way come to the aid of the prosecution regarding the alleged role ascribed to the petitioner in the commission of offence.

17. Considering the materials on record, the basis and the manner of implication of the present petitioner, this Court is persuaded to hold that further continuance of the petitioner in custody is not warranted.

18. Hence, it is directed that the petitioner shall be released on bail on such terms to be fixed by the learned Court in seisin over the matter.

19. Taking into account that further investigation is going on, to allay the legitimate apprehension of the learned Public Prosecutor(s) and the informant, this Court additionally directs that the petitioner shall not leave the jurisdiction of the learned Court in seisin without prior intimation to the Investigating Officer and shall not leave the State of Odisha without express permission of the Court in seisin and shall cooperate with the ongoing investigation.

20. While releasing the petitioner on bail learned Court shall verify the assertions that the petitioner is a first offender. If it comes to the fore that the petitioner has any criminal antecedent of similar nature, this order shall stand recalled.

21. It is apt to state that the analysis as above is only for the limited purpose of considering this bail application and ought not to be construed as expressing any opinion regarding the evidentiary value of the materials on record.

21(A). The observation(s) are made in the context of the allegation vis-à-vis present accused only and cannot be relied upon qua any other accused whose complicity has to be adjudged independently on its own merit.

22. Accordingly, the BLAPL stands disposed of.

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

(V. NARASINGH)
Judge