

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.7710 of 2022

Tophan Dwari @ Behera

....

Petitioner

Mr.J. Behera, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. K.K. Gaya, ASC

CORAM: JUSTICE V. NARASINGH

ORDER

16.12.2022

Order No.

03.

1. Heard learned counsel for the Petitioner and learned counsel for the State.
2. The Petitioner is an accused in G.R. Case No.217 of 2019 pending on the file of learned J.M.F.C., Khandapada, arising out of Khandapada P.S. Case No.150 of 2019, for commission of offence under Sections 302/201/120-B/34 IPC.
3. Being aggrieved by the rejection of his application for bail U/s.439 Cr.P.C. by the learned Addl. Sessions Judge, Nayagarh by order dated 29.07.2022 in the aforementioned case, the present BLAPL has been filed.
4. It is submitted by the learned counsel that the charge sheet has been filed on 09.12.2019 showing him as an absconder.
5. It is stated that the Petitioner has been taken into custody on 28.06.2022.

6. He further submits that the Petitioner is not a named accused and co-accused who are similarly circumstanced, namely, Charan @ Krupasindhu Pradhan has been released on bail by order dated 16.03.2021 in BLAPL No.3527 of 2020 and Siba Pradhan has been released on bail by order dated 19.04.2021 in BLAPL No.8557 of 2020. Hence, on the ground of parity, the Petitioner seeks release on bail.

7. Learned counsel for the State opposes the prayer on the ground that Petitioner's absconding for a long period is a testimony to his criminal intent. Hence, the question of parity does not arise in the case at hand.

8. It is apt to state here that while releasing Siba Pradhan, as noted above, this Court referred to the statement of one Babuli Nayak who stated about the conspiracy of the accused persons prior to the date of occurrence and extra judicial confession of one of the co-accused, namely, Charan @ Krupasindhu Pradhan who has since been released on bail.

9. It is also on record that this Court had released another co-accused, namely, Manu @ Narayan Pradhan by order dated 17.03.2020 in BLAPL No.10587 of 2019 and in the said case this Court had specifically referred to the previous enmity between the deceased and the co-accused which had resulted in two F.I.Rs being lodged namely Khandapada P.S. Case No.132 of 2019 dated 17.07.2019 and Khandapada P.S. Case No.136 of 2019 dated 21.07.2019 against co-accused persons, namely, the present Petitioner, Dhaneswar Pradhan, Krupasindhu Pradhanm, Kumpa Nayak, Siba Pradhan and Isira Pradhan. As noted earlier Krupasindhu Pradhan and Siba Pradhan have been released on bail.

10. On a conspectus of the materials on record, there being no direct evidence to connect the Petitioner with the alleged crime and keeping in view the nature of circumstantial evidence and the release of the co-accused who are prima facie similarly placed with the Petitioner on bail, this Court directs the Petitioner to be released on bail on such terms to be fixed by the learned Court in seisin.

11. Taking into account that the Petitioner was absconding for a long period, additionally it is directed that the Petitioner shall appear before the jurisdictional police station once every week and such date and time to be stipulated till conclusion of trial.

12. The BLAPL thus stands disposed of.

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

(V. NARASINGH)
Judge

PKS

