

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.8721 of 2023

Lalit Mohan Baral* *Petitioner

Mr.Devashis Panda, Advocate

-versus-

State of Odisha* *Opp. Party

*Mr.Sonak Mishra,
Addl. Standing Counsel*

BLAPL No. 12119 of 2022

Malaya Kumar Barik* *Petitioner

Mr.B. Nayak, Advocate

-versus-

State of Odisha* *Opp. Party

*Mr.Sonak Mishra,
Addl. Standing Counsel*

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

ORDER

01.02.2024

Order No.

**BLAPL No.8721 of 2023 &
BLAPL No. 12119 of 2022**

04. Both the matters are taken up through Hybrid arrangement (video conferencing/physical mode).

Since both the bail applications arise out of one P.S. and S.T. Case number, with the consent of the learned counsel for the parties, they are heard together and

disposed of by this common order.

Heard learned counsel for the petitioners and learned counsel for the State in both the cases.

Both the applications are under section 439 of Cr.P.C. in connection with Mahanga P.S. Case No.05 of 2021 corresponding to S.T. Case No.32 of 2021 pending in the Court of learned Addl. Sessions Judge, Salipur for offences punishable under sections 341/302/120-B/109/34 of the Indian Penal Code and sections 25 and 27 of the Arms Act .

The bail application of the petitioner Lalit Mohan Baral was rejected on 22.06.2023 and the bail application of the petitioner Malaya Kumar Barik was rejected on 18.11.2022 by the learned Addl. Sessions Judge, Salipur.

Learned counsel for the petitioners submitted that the petitioner Lalit Mohan Baral, who is aged about eighty years, is in judicial custody since 05.01.2021 and as such, he has completed more than three years in judicial custody and so far as the petitioner Malaya Kumar Barik is concerned, he is in judicial custody since 22.01.2021. Learned counsel further submitted that out of fifty nine charge sheet witnesses, thirty one witnesses have already been examined and the I.O. is the last witness on behalf of the prosecution, whose examination is going on and the rest of the witnesses have been declined by the prosecution. Learned counsel further submitted that there are no eye witnesses to the occurrence and the case rests on the oral dying declaration stated to have been made before P.Ws.7, 8, and 9 at the spot and P.W.10 and P.W.11 in the Ambulance in which both the deceased were

shifted to the hospital. In view of the critical condition of the two deceased, it is difficult to place reliance on the dying declaration. Learned counsel further submitted that at this stage, there is no chance of tampering with the evidence and since both the petitioners are permanent residents of their respective villages, the bail applications may be favourably considered.

Learned counsel for the State submitted that the witnesses to the dying declaration have named the petitioners so also the co-accused persons to have participated in the assault of the deceased persons.

Since detailed documentation on the merits of the case is to be avoided while considering the bail application and the learned trial Court is to adjudicate at the appropriate stage whether the evidence relating to dying declaration is to be accepted or not, it would not be proper on my part to give any finding on this aspect. In view of the settled position of law that even if there is prima facie case, if there is no reasonable apprehension of tampering with the witnesses or evidence or absconding from the trial, the accused persons cannot be denied bail pending trial. However, taking into account the stage of trial, the age of the petitioner no.1 Lalit Mohan Baral, the period of detention of the petitioners in judicial custody and since the material witnesses have been examined and now the examination of the I.O. is under progress and at this stage, there is no chance of tampering with the evidence and that the petitioners are local persons and there is no chance of their absconding, I am inclined to

release both the petitioners on bail.

Let the petitioners be released on bail in the aforesaid cases on furnishing a bail bond of Rs.50,000/- (rupees fifty thousand) each with two local solvent sureties each for the like amount to the satisfaction of the learned Court in seisin over the matter with further conditions as the learned Court below may deem just and proper including the conditions that they shall not indulge in any criminal activities and shall appear before the learned trial Court on each date to which the case would be posted for trial. Violation of any of the conditions shall entail cancellation of bail.

Both the BLAPLs are accordingly disposed of.

Issue urgent certified copy as per Rules.

(S.K. Sahoo)
Judge

PKSahoo

Signature Not Verified

Digitally Signed
Signed by: PRAMOD KUMAR SAHOO
Designation: Secretary
Reason: Authentication
Location: HIGH COURT OF ORISSA
Date: 02-Feb-2024 17:46:44

