

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 7805 of 2021

Sri Himanshu Sethy

....

Petitioner

Mr. Jaydeep Pal, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. L. Samantaray, A.G.A.

CORAM:

JUSTICE SAVITRI RATHO

Order No.

ORDER

27.01.2022

- 02.
1. I have heard Mr. Jaydeep Pal, learned counsel for the petitioner and Mr. L. Samantaray, learned Additional Government Advocate through hybrid mode.
 2. This is an application under Section 439 Cr.P.C. for grant of bail to the petitioner, namely, Sri Himanshu Sethy in connection with Birmaharajpur P.S. Case No. 99 of 2020 corresponding to S.C. Case No. 50 of 2020 pending in the Court of learned Sessions Judge, Sonapur registered against the petitioner for commission of offence punishable under Section 302 of I.P.C.
 3. The petitioner had moved an application for bail before the Court of learned Sessions Judge, Sonapur which was rejected on 01.07.2021.
 4. The brief facts of the case as per the F.I.R. are that the informant along with his three friends have conjointly have taken auction of their village pond and pisciculture. The petitioner was aggrieved as he had been ignored. On the date of occurrence, the petitioner came to his house and searched him in order to assault him. But he was absent, so he threatened his father - the deceased that he

would murder him or his son. Later when he met his father near the village Chowk, he assaulted him by means of axe causing bleeding injury. His father succumbed to his injuries at the spot. This occurrence was witnessed by Dhuka Sethi, Tanka Sethi and others of his village. He was shifted to DHH, Sonepur by 108 Ambulance where the Doctor declared him dead. Basing on the report of Satchidananda Sethi, P.S. Case No. 99 of 2020 was registered under Section 302 of I.P.C. on 10.06.2020 at 08.10 P.M.

5. It has been submitted by the learned counsel for the petitioner that the petitioner is in judicial custody since 13.06.2020 and in the meantime, the charge sheet has already been submitted. He further submitted that the death of the deceased was due to assault by means of an Axe by the accused, but the Police also seized other weapon of offences like two pieces of broken bricks & one iron rod from the spot, the statement of the witnesses are self-contradictory to each other regarding the occurrence and regarding use of weapon which is fatal to the prosecution. He further submits that there is no direct evidence against the petitioner and the circumstantial evidence allegedly collected against him is contradictory and the petitioner has no criminal antecedents.

6. Mr. L. Samantaray, learned Additional Government Advocate for the State opposed the prayer for bail submitting that the deceased was nursing a grudge against deceased and his son and has assaulted the deceased with a tangia and a large stone resulting in fatal injuries.

7. Witnesses have stated that the petitioner is a hot headed person and was aggrieved with the deceased Paban and his son Sachitananda regarding a pisciculture lease. On the date of occurrence the petitioner said that he was going to beat Sachitananda but came across the

deceased. The deceased tried to walk away but the petitioner assaulted him with a tangia and a stone on the head which has resulted in his death. Four stab wounds were detected on the head of the deceased. Cause of death has been opined to be injuries on brain leading to brain death leading to respiratory failure and heartburn and permanent irreversible death.

8. Considering the respective submissions and the nature of materials available against the petitioner, I am not inclined to release the petitioner on bail at this stage.

9. As the petitioner is in custody since 13.06.2020 and case has been committed since July 2021, liberty is granted to the petitioner to move the learned trial court for bail afresh, if there is undue delay in completion of trial.

10. The BLAPL is accordingly dismissed with the aforesaid observation.

11. In view of the restrictions due to resurgence of COVID-19 situation, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020, modified by Notice No.4798 dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

(Savitri Ratho)
Judge

puspa