

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.8050 of 2021

Md. Habib

....

Petitioner

Mr. A.R. Panda, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. M.K. Mohanty, A.S.C.

*Mr. S.K. Baral, Advocate for the
Informant*

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

16.03.2022

Order No.

- 03.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. Heard learned counsel for the Petitioner and learned counsel for the State. Perused the F.I.R., case diary and other relevant documents as well as statement of the witnesses.
 3. This is an application under Section 439 of the Criminal Procedure Code.
 4. The Petitioner is an accused in C.T. Case No.203 of 2021 arising out of Balaramgadi Marine P.S. Case No.3 of 2021 pending in the court of learned S.D.J.M., Balasore for commission of offence punishable under Sections 302/147/148/449/120-B/216/109/149, I.P.C. read with Sections 25 and 27 of the Arms Act.
 5. The brief fact of the prosecution story, as narrated in the F.I.R.,

is that 15.03.2021, the informant's brother of the deceased has lodged a written report at Balaramgadi Marine Police Station, alleging that on 15.03.2021 his elder brother, namely, Bijay Kumar Pradhan had been to Balaramgadi to unload fish from his Trawler. At that point of time, five to six unknown accused persons armed with deadly weapons appeared before the deceased and assaulted him brutally and mercilessly, as a result of which, the deceased sustained bleeding injuries and eventually succumbed to the injury at the District Headquarters Hospital, Balasore. Upon registration of the F.I.R., the local police took up investigation and in course of investigation apprehended one accused, namely, Japan @ Sk. Imran on suspicion. The said apprehended accused made confessional statement before the police indicating the name of some of the accused persons.

6. Earlier the petitioner moved a bail application before the 3rd Additional Sessions Judge, Balasore with a prayer to release him on bail, vide order dated 08.09.2021 the learned court below has rejected the prayer for bail of the petitioner. However, upon scrutiny of the rejection, it is found that no specific reason has been ascribed as to why the bail application of the petitioner has been rejected.

7. It is submitted by learned counsel for the Petitioner that the Petitioner is languishing in jail custody since 17.03.2021 and in the meantime, investigation of the case has been concluded and charge-sheet has been submitted. It is further submitted by learned counsel for the petitioner that the petitioner is an innocent person and he has been falsely implicated in this case. He further draws attention of this Court to the F.I.R. lodged against the unknown persons. Subsequently, on the basis of confessional statement of the apprehended accused, namely, Japan @ Sk. Imran, the present

petitioner was arrested by the police. It is also submitted that none of the witnesses examined by the police have stated anything specifically against the present petitioner and further, none of the witnesses have stated regarding any overt-act played by the petitioner in the alleged crime. In such view of the matter, learned counsel for the Petitioner prays for release of the Petitioner on bail and further assures the Court that the petitioner will appear in the trial court on each date fixed by the trial court and he also submits that there is no scope for absconding or fleeing away from the hands of justice.

8. Further, learned counsel for the petitioner submits that some of the co-accused persons, who are on similar footing with the present petitioner, have already been released on bail by this Court. Learned counsel for the petitioner relies upon the order dated 08.12.02021 passed in BLAPL No.6217 of 2021 (in respect of Sk. Abdul Asif @ Lucky), order dated 03.03.2022 in BLAPL No.11201 of 2021(in respect of Babulu@ Sk. Farid), order dated 06.01.2022 in BLAPL No.8582 of 2021 (in respect Sapan Kumar Tapasi).

9. Learned counsel for the State, on the other hand, opposes the prayer for bail of the Petitioner on the ground that another allegation in the F.I.R. is very serious and that the deceased has been murdered brutally and mercilessly by the petitioner as a result of conspiracy arising out the business rivalry. He further submits that the principal accused Japan @ Sk. Imran named the present petitioner in his confessional statement. Accordingly, learned counsel for the State strongly urged that the bail application of the petitioner does not deserve to be considered sympathetically and accordingly, the same should be rejected.

On examination of the case diary as well as upon going through the statements of the witnesses recorded under Section 161 of the Cr.P.C., it is revealed that all the accused persons gathered near the jetty where the deceased was weighing fish caught. Initially, one Rabi Barik assaulted the deceased with 'Telenga Katuri' on the back of the deceased whereafter the deceased to save his life rushed into the trawler. Then he was assaulted by Japan @ Sk. Imran, one Katibabu, Bisu @ Biswajit Sandha. Both Japan @ Sk. Imran and Sk. Isak, who were holding pistol and altogether fired eight round of bullets towards the deceased. One of the accused Pandu @ Asish Kumar Srichandan sustained bullet injury on his left palm and thereafter, the accused persons fled away from the spot. From the statement of the witnesses, it appears that both Japan @ Sk. Imran and Sk. Isak are the principal assailants, who assaulted the deceased with gun shots fired with pistol as a result of which the deceased died. Further, the same is corroborated by the opinion of the Doctor in the post-mortem examination.

10. Having heard learned counsel for the parties, considering the surrounding circumstances as well as fact that some of the co-accused persons, who stand on similar footing with the present petitioner, have already been released on bail and the entire prosecution in its entirety and further keeping in view the period of custodial detention of the Petitioner, this Court is inclined to release the Petitioner on bail.

11. Let the Petitioner be released 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 subject to the following conditions:-

- I. Petitioner while on bail shall not indulge in any offence of similar nature;
- II. He shall not tamper with the prosecution evidence or try to threaten or influence or terrorize the witnesses in any manner whatsoever;
- III. He shall cooperate with the trial and appear before the trial court on each date fixed by the trial court;
- IV. He shall not leave the jurisdiction of the Court in seisin over the matter and shall furnish his address and mobile number to the police from time to time.

Violation of any of the terms and conditions shall entail cancellation of bail.

12. It is open for the court in seisin over the matter to impose other conditions may deem just and proper.

13. The Bail Application is accordingly disposed of.

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

(A.K. Mohapatra)
Judge