

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 9894 of 2022

***Rabindra @ Rabi Narayan
Nahak***

Petitioner

Mr. S.K. Dash, Advocate

-versus-

State of Orissa

Opposite Party

Mr. P.K. Maharaj, ASC

CORAM: JUSTICE V. NARASINGH

**ORDER
29.11.2022**

Order No.

02.

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 connection with Special S.T. Case No.82 of 2022, pending in the Court of the learned Additional Sessions Judge LR and LTV, Berhampur, Ganjam, arising out of Digapahandi P.S. Case No.307 of 2021, for alleged commission of offences under Section 302 of IPC.
4. Being aggrieved by the rejection of his application for bail U/s.439 Cr.P.C. by the learned Additional Sessions Judge LR and LTV, Berhampur, by order dated 20.05.2022 in the aforementioned case, the present BLAPL has been filed.
5. It is submitted by the learned counsel that the petitioner is in custody since 27.11.2021 and charge-sheet has been filed on 23.03.2022 and admittedly trial has commenced and ten witnesses

have been examined the statements of the said ten witnesses are on record. Out of said ten witnesses P.W.2, P.W.3 and P.W.4 have not supported the prosecution.

6. It is further submitted by the learned counsel for the petitioner that there is no material on record to connect the petitioner with the offence, which is based on circumstantial evidence and as some of the witnesses have turned hostile, further continuance of the petitioner in custody is unwarranted.

7. Learned counsel for the State on the other hand submits that P.W.8 the informant had supported the prosecution and also P.W.7. Hence, the petitioner ought not to be released on bail.

8. This Court perused the statement of the informant-P.W.8. In paragraph 3 she stated thus:-

“On 22.11.22, the deceased Kuna Mohanty made phone call to my sister Rajalaxmi Pattnaik that the accused is threatening her to do away her life and abusing in obscene language. Rajalaxmi advised her to keep quiet and remained inside the house by locking the door of the house. Hence, on that night Rajalaxmi intimated his fact to me and advised me to sort out the matter. As on that day, I was not feeling well, I could not proceed to the spot.”

9. P.W.7 is Rajalaxmi Pattnaik, to whom the deceased is supposed to have made a phone call. The Said Rajalaxmi Pattnaik in paragraph-2 of her deposition has clearly stated about the threat given by the accused and also has said that she over heard about the threat being given to the deceased.

10. On consideration of such evidence on record, which is prima facie admissible and if believed, can be treated to be statement under Section 32(1) of the Evidence Act, in view of the law laid down by the Privy Council in the case of ***Pakala Narayan***

Swami Vs. Emperor reported in *AIR (1939) Privy Council P47*, this Court is **not inclined** to entertain this bail application.

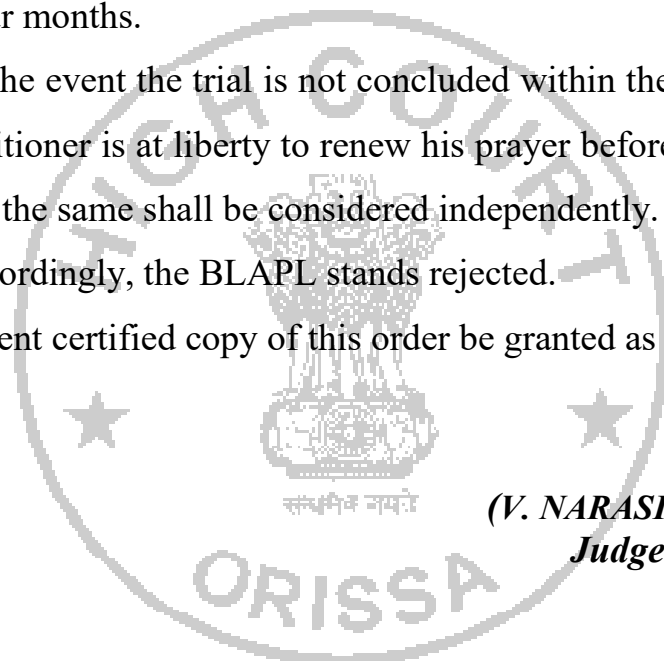
11. It is made clear that the observations made herein are only for purpose of considering the bail application of the petitioner and shall not in any way be construed as expressing any opinion regarding the materials on record vis-à-vis accusation relating to the petitioner, which has to be adjudged on its own merits.

12. Since the petitioner is stated to be in custody from 27.11.2021, the trial be expedited and preferably concluded within a period of four months.

13. In the event the trial is not concluded within the stipulated time, the petitioner is at liberty to renew his prayer before the Court in seisin and the same shall be considered independently.

14. Accordingly, the BLAPL stands rejected.

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



(V. NARASINGH)
Judge

Ayesha