IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.573 of 2021

Basu Dundi alias Basudev .... ***Appellant***
Mr.Umakanta Barik, Advocate

-versus-

State of Odisha & another .... ***Respondents***
Mr. P.C.Das, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER
29.03.2022

Order No.

02. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).

2. The present appeal preferred under sections 14(A) of S.C. & S.T.(PA) Act read with section 439 of the Code of Criminal Procedure filed by the Appellant challenging the order dated 08.10.2021 passed in C.T.Case No.420/16 of 2013-16 (Special Act) which arises out of Jaipatna P.S.Case No.241 of 2013 pending in the Court of the learned Additional Sessions Judge-cum-Special Judge, Dharmagarh.

3. Heard Mr.Umakanta Barik, learned counsel for the Appellant and Mr.P.C.Das, learned Additional Standing Counsel for the State and Mr.A.K.Mohanty, learned Advocate appearing on behalf of the Respondent No.2-informant.

4. The Prosecution case, in a nutshell is that one Arjun Nial lodged an F.I.R. at Jaipatna P.S. on 16.12.2013 inter alia alleging that on 15.12.2013 the victim namely, Dialu Nial and Nilambar Dhangadamajhi along with many other laborers had gone to village Kotamal under Khariar Police Station in Nuapada district. Thereafter they were taken to Hyderabad for labour work in a Brick Kiln. In the

village they were kept in the house of Labour Leader-accused Parbesh @ Parame Dundi of village Kotamal. As per the oral agreement, the above named labour leader had assured to pay Rs.14,000/- per head as advance payment before proceeding to Hyderabad. However, he had paid only Rs.4,000/- to Rs.5,000/- to each one of them and they were told that the rest amount shall be paid before leaving for Hyderabad. However, the same was not complied with by the Labour Leader. The labourers including the victims were first taken to Raipur and from there, they were taken to Hyderabad by train. Upon repeated insistence, accused Parbesh did not pay the balance amount to the labourers, rather he threatened them to take away their lives. Thereafter the labourers started absconding one by one from the train. In the meanwhile accused Parbesh informed some of his friends including the present Appellant to catch hold of these labourers who have absconded. All the labourers absconded except the two victims named herein above. Both the victims Dialu Nial and Nilamber Dhangadamajhi were brought back to the house of Parbesh in village Kotamal. Thereafter they were taken to the field of accused Parbesh and were engaged in collecting cotton in the cotton field.

On 15.12.2013 in the night, accused Parbesh and other accused persons took the victims to Pati Dangar by the side of Sindhekela-Titlagarh road near village Deheli by a Marshal vehicle. Accused Baijyanath Rauti and Bana Majhi chopped the right palm of the victims by means of a tangia (axe). But the victims somehow managed to escape and went to Bhawanipatna and were admitted at District H.Qrs Hospital, Bhawanipatna. Thereafter this F.I.R. has been lodged.

5. Learned counsel for the appellant submits that the Appellant is in custody since 26.08.2021. Although he was not initially named in the F.I.R., but subsequently on the basis of a confessional statement made by co-accused he has been implicated in this case and accordingly he

was arrested by the Police. The present trial out of which this bail application arises is a split up trial. In the original trial the principal accused persons have been convicted and sentenced to undergo life imprisonment.

6. Learned counsel for the Appellant further submits that so far as the present Appellant is concerned, he is no way involved in the heinous crime as alleged in the F.I.R. He further submits that in the first part of the occurrence, the Appellant had a role in catching hold of the victims at the Station and bringing them to village Kotamal. Thereafter on 15.12.2013 when the two victims were taken by the accused persons, the appellants never accompanied them and he further submits that the Appellant's role is confined to one as narrated herein above. He further submits that none of the witnesses examined in this case has implicated the present Appellant. Moreover, the confessional statement of the co-accused does not reveal that the present Appellant accompanied him on the alleged date of occurrence.

7. Learned Additional Standing Counsel on the other hand opposes the bail application stating that the Appellant has been named by the principal accused in the case while admitting the fact that the Appellant had not assaulted the victims. He further submits that the complicity of the present Appellant cannot be completely ruled out. He also submits that considering the heinous nature of crime which can well be said as a crime against humanity, urges that this Court should not show any leniency towards the accused persons. On such ground, learned Additional Standing Counsel prays for rejection of bail application of the appellant.

8. Learned counsel appearing for the informant while supporting the stand of the learned counsel for the State further submits that both the victims belong to very poor family and their entire family lives on the earning they get on a daiy labour. Therefore, learned counsel for the

informant urges before this Court to grant compensation to the victim in this case.

9. Having heard learned counsel for the respective parties and upon perusal of the relevant materials on record, as well as considering the surrounding circumstances and the nature of allegations and the role played by the Appellant therein, this Court is inclined to release the Appellant on bail in the aforesaid case on furnishing a bail bond of Rs.30,000/- (Rupees Thirty thousand) with two local solvent sureties each for the like amount to the satisfaction of the learned court in seisin over the matter. Further, it is open for the learned court in session over the matter to fix any terms and conditions as would be deemed fit and proper in the facts and circumstances of the present case.

10. With the aforesaid observation, the present appeal is allowed. The impugned order dated 08.10.2021 passed in C.T.Case No.420/16 of 2013-16 (Special Act) by the learned Additional Sessions Judge-cum-Special Judge, Dharmagarh is hereby set aside.

11. Before parting this Court would like to observe that it is open for the victims to approach the concerned District Judge, who is the head of the District Legal Service Authority for payment of any compensation amount. In the event the victims approach the District Legal Service Authority under Odisha Victims Compensation Scheme, 2012 by filing a proper application, the same shall be considered in accordance with law and the victims shall be provided immediate compensation as would be determined by the Legal Service Authority.

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

RKS

(A.K. Mohapatra)
Judge