

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.9235 of 2021

Chittaranjan Panigrahi

....

Petitioner

Mr.Devashis Panda, Advocate

-versus-

State of Odisha

....

Opposite Party

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

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

11.05.2022

Order No.

06.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. The present bail application has been filed by the Petitioner challenging the order dated 04.10.2021 passed in B.A.No.849/91 of 2021 by the Special Judge (Vig.), Balasore I/C. The Petitioner is in judicial custody since 03.09.2021 for his alleged involvement in an offence punishable under Sections 302,216,120(B)/34 of the Indian Penal Code read with Section 25/27 of the Arms Act in C.T.Case No.672 of 2021 arising out of Industrial Area P.S.Case No.136 dated 28.08.2021.
3. The case of the prosecution, in gist as called out from the F.I.R. is that on 28.08.2021 a plain paper F.I.R. was lodged by one Umesh Chandra Behera before the I.I.C., Bamapda (Industrial Area) P.S. inter alia alleging that in the evening of the very same day in between 7 P.M. to 7.30 P.M. while he was at Golai Chhak, he received a telephonic call that some unknown culprits have committed murder of his younger brother Nunu @ Ramesh Behera

near Satyam Nagar, Achuyutapur and the dead body of his brother was lying there. The Office staff of his younger brother had also intimated the informant about the incident and alleged that the younger brother of the informant has been murdered by some unknown accused persons. Thereafter the informant immediately rushed to the spot and found the body of his younger brother lying there. Whereafter with the help of local people informed the matter to his relative and co-villagers and lodged the F.I.R.

4. After the F.I.R. was lodged, the I.O. took up the investigation. In course of such investigation the I.O. has recorded the statements of the witnesses. Statement of one Sambhua @ Suraj @ Sambhunath Bisoi was also recorded under section 161 Cr.P.C. Further, on the basis of the statement of the said Sambhua @ Suraj @ Sambhunath Bisoi recorded under section 27 of the Indian Evidence Act in presence of the witnesses Satyaban Lenka and Umakanta Giri, the weapon of offences were also seized by the I.O.

5. Heard Mr.Devashis Panda, learned counsel for the Petitioner and Mr.M.K.Mohanty, learned Additional Standing Counsel for the State. Perused the case diary, F.I.R. as well as the statements of the witnesses recorded by the I.O.

6. It is submitted by Mr.Panda, learned counsel for the Petitioner that the Petitioner is in custody since 03.09.2021 and that the investigation of the case has been concluded and the I.O. has filed the final charge sheet under Sections 302,216,120-B/34 of the Indian Penal Code read with Sections 25/27 of the Arms Act. It is further contended by the learned counsel for the Petitioner that the Petitioner has been falsely entangled in the present case. He further submits that the statements of two eye witnesses to the occurrence namely one Ajaya Behera and Manoj Bhuyan clearly reveal that on the date of

occurrence the deceased, who is a land owner was called to his land. Accused Sambhua @ Suraj @ Sambhunath Bisoi along with another co-accused Ranjan assaulted the deceased by means of a *telenga* katuri and *gupti*. He further submits that the Petitioner was not present at the spot of occurrence and the eye witnesses cited by the Prosecution have not stated regarding any assault by the present Petitioner.

7. After the F.I.R. was lodged by the informant, accused Sambhua @ Suraj @ Sambhunath Bisoi was arrested by the Police immediately. The said Sambhua @ Suraj @ Sambhunath Bisoi confessed before the I.O. that eight months ago he had sold a plot to the Petitioner and had received commission from him. In the process he had developed acquaintance with the Petitioner and used to talk with him frequently. He has further stated that 2/3 months back he and his friend negotiated with the deceased for sale of some land. However, the deceased had by-passed them and had purchased the land through another broker. He has further stated in his confessional statement that the Petitioner had called him to eliminate the deceased since the approach to his plot was being obstructed by the purchase of the other land by deceased and a deal was finalized between them whereunder the Petitioner had promised to pay a sum of Rs.50,00,000/-. Thereafter the accused discussed the plan with some others for assistance and decided to murder the deceased. The said accused has also stated that he had taken an advance of Rs.1,00,000/- from the Petitioner and had share the same with Ranjan, the other accused. He has further disclosed that on 28.08.2021 he along with Ranjan, Durga Das and Laxmi Bhai came together at Remuna Golai Square where all four of them decided to finish up the deceased. Accordingly, the deceased was called to his plotting area by Ranjan

and once the deceased arrived at the spot, the two accused persons brought out the hidden weapons and both Ranjan and Sambhua @ Suraj @ Sambhunath Bisoi assaulted the deceased with five blows on his head. He further stated that after commission of the crime, the weapon of offences were concealed under a bush near Brahmania Pokhari and both Sambhua @ Suraj @ Sambhunath Bisoi and Ranjan went away to Berhampur to the house of Ranjan's sister and stayed there till they were apprehended by the Police on 02.09.2021.

8. By referring to the statements of the eye witnesses recorded under section 161 Cr.P.C. as well as 27 of the Indian Evidence Act, learned counsel for the Petitioner submits that there is no allegation of any assault by the Petitioner on the deceased. He further submits that even assuming that the Petitioner would be roped in by taking resort to the provisions under section 120-B of the Indian Penal Code, but not conceding, the prosecution has failed to establish the conspiracy part clearly by bringing materials on record. He further submits that the allegation under section 120-B can only be established during trial by leading cogent and trustworthy evidence to nail the conspirator. So far as the present Petitioner is concerned, learned counsel for the Petitioner submits that there is absolutely no material on record to implicate the Petitioner in the present crime as the materials on record do not clearly establish the involvement of the Petitioner in conspiracy part of the crime

9. Learned Additional Standing Counsel on the other hand submits that the allegation made in the F.I.R. are very serious in nature and further he submits that there are ample materials to implicate the Petitioner in the conspiracy of the crime. Relying upon the confessional statement of co-accused persons, learned Additional Standing Counsel submits that the Petitioner has been named by the

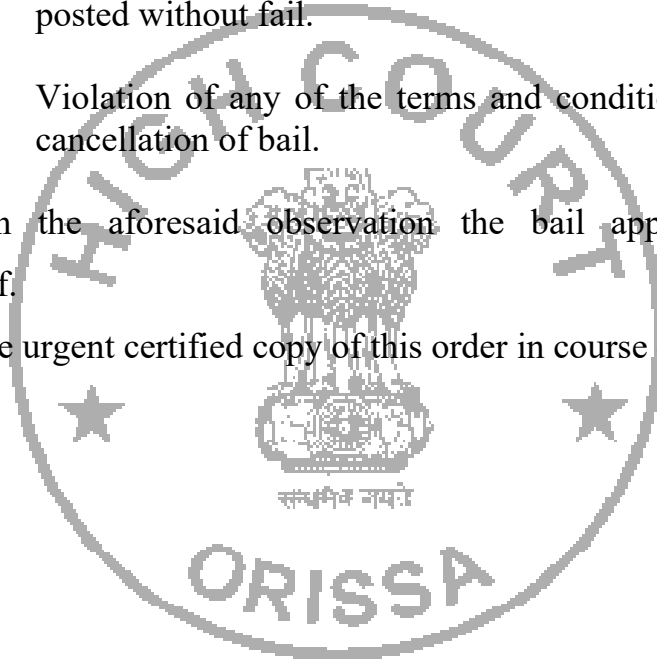
main assailant in his confessional statement. On such submission, learned Additional Standing Counsel urges for rejection of the bail application of the Petitioner at this juncture as the release of the Petitioner at this juncture would affect the trial adversely.

10. Upon perusal of the materials available on record including the confessional statement of the accused Sambhua @ Suraj @ Sambhunath Bisoi, this Court is of the considered opinion that the allegations against the present petitioner is primarily under section 120-B of the Indian Penal Code and one of the witnesses has stated about the presence of the Petitioner at the spot of occurrence and that there is any assault by the Petitioner on the deceased. This Court is also of the firm view that the conspiracy punishable under section 120-B of the Indian Penal Code is basically a matter to be considered during trial after taking into consideration the entire evidence in the present case. Therefore, at this juncture this Court refrain itself from entering into the said arena and to make any comment in that which would affect the trial adversely.

11. Having heard learned counsel for the parties, considering the entire factual scenario as well as keeping in view the statements of the witnesses recorded in this regard and other relevant materials placed before this Court and further taking into consideration the role of the present Petitioner in the entire crime and the period of his custodial detention, this Court is inclined to release the Petitioner on bail in the aforesaid case subject to the Petitioner furnishing a bail bond of Rs.1,00,000/- (Rupees one lakh) with two local solvent sureties each for the like amount to the satisfaction of the learned court in seisin over the matter. Further the release of the Petitioner on bail shall be subject to the following terms and conditions :

- i) he shall not indulge himself in any similar nature of offence while on bail.

- ii) shall not make any attempt to influence, induce, gain over or threaten any prosecution witnesses while on bail.
 - iii) he shall not leave the jurisdiction of the court in seisin over the matter without permission of the said court. Further he shall surrender his travelled documents including pass part before the trial court will conclusion of the trial.
 - iv) The Petitioner shall keep the concerned Police Station informed about any change in address.
 - v) The Petitioner shall cooperate with trial court for early conclusion of the trial and accordingly shall appear before the trial court on each and every date when the case is posted without fail.
 - vi) Violation of any of the terms and conditions shall entail cancellation of bail.
12. With the aforesaid observation the bail application stands disposed of.
9. Issue urgent certified copy of this order in course of the day.



RKS

(A.K. Mohapatra)
Judge