

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.9479 of 2021

Riaz Khan

....

Petitioner

Mr. R.R. Mishra, Advocate

-Versus-

State of Odisha

....

Opposite Party

Mr. S.S. Mohapatra, Additional Standing Counsel

CORAM:

MR. JUSTICE R.K. PATTANAİK

Order
No.

ORDER
12.01.2022

01. 1. This matter is taken up through video conferencing mode.
2. Heard learned counsel for the petitioner and learned counsel for the State.
3. This is an application under Section 439 of Cr.P.C for grant of bail to the petitioner in connection with Balasore Sadar P.S. Case No.131 of 2014 corresponding to C.T. Case No. 1215(A) of 2014 pending in the file of learned J.M.F.C.(R), Balasore on the grounds stated therein.
4. Perused the FIR i.e. Annexure-1 and impugned order dated 14.09.2021 as at Annexure-2.
5. Gone through the contents of the FIR.
6. Learned counsel for the petitioner submits that the alleged occurrence is of the year 2014 for which the FIR was lodged by the informant. It is further submitted that two other accused persons, namely, Santo @ Santosh Das and Habibul Khan faced trial and have been acquitted by judgment dated 4.2.2016 in ST Case No.37

of 2015 and in so far as the present accused is concerned, he was shown as an absconder in the charge sheet and later, on the strength of an NBW(A) issued by the learned court below has been arrested and presently in judicial custody from 26.08.2021 and considering the above fact and the order of acquittal in favour of two others, the petitioner should be enlarged on bail with any conditions which is objected to by the learned counsel for the State on the ground that there is material on record to show that all three accused persons participated during the incident and looted the victim and causing injury which proved to be fatal. The learned counsel for the State submits that the petitioner is having one more criminal case.

7. The fact of acquittal directed against two other accused persons named above has been averred in the bail application. It is contended that the said accused persons faced trial in ST Case No.37 of 2015 and stood acquitted of the charges by judgment dated 04.02.2016. As it is made to understand, the petitioner was present alongside the other two one of whom, namely, Santo @ Santosh Das allegedly assaulted the deceased and then looted the cash and gold ornaments kept in his motor cycle dickey. As earlier mentioned, the incident is of the year 2014 and in the meantime, seven years have gone by. In fact, on the strength of warrant of arrest, the petitioner was apprehended recently. It can thus be said that the petitioner absconded after the occurrence and therefore, charge sheet was filed showing him as an absconder. The petitioner is in custody since last five months who is to face trial afresh after commitment by the learned court below.

8. Having regard to the above facts and nature of allegations and manner of participation and taking into account the fact that incident is almost seven years old and in the meantime, two other accused persons have been acquitted of the levelled charges, the

Court is of the considered view that the accused should be released on bail subjected to conditions and accordingly, it is ordered.

9. In the result, the petitioner is allowed to go on bail on furnishing a bail bond of Rs.40,000/-(rupees forty thousand) with one solvent surety for the like amount to the satisfaction of the learned court below in seisin over the matter, who shall impose such other conditions, as deemed just and proper, in the facts and circumstances.

10. The BLAPL is disposed of.

11. As the restrictions due to the COVID-19 situation are continuing, learned counsel for the parties may utilize a soft copy of this order available in the High Court's website or print out thereof at par with certified copy in the manner prescribed, vide Court's Notice No.4587, dated 25 March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

(R.K. Pattanaik)
Judge