

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.9483 of 2021

Narendra Ganda.

....

Petitioner

-versus-

State of Odisha

....

Opposite Party

CORAM: JUSTICE S. PUJAHARI

Order
No.

ORDER
29.04.2022

03. 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 being in custody in C.T. Case No.112 of 2018, arising out of Kotpad P.S. Case No.103 of 2018, pending in the court of the learned Addl. Sessions Judge, Jeypore, has filed this petition for his release on bail. The offences alleged against him are punishable under Sections 302, 307/34 of IPC and Sections 25/27 of the Arms Act.
4. It is submitted by the learned counsel for the petitioner that since in the earlier bail application vide BLAPL No.4677 of 2019, which was rejected by this Court vide order dated 09.09.2021, facts were not properly placed, the present bail application has been filed by the petitioner for his release on bail. According to the learned counsel for the petitioner, the petitioner

was driving the motorcycle wherein co-accused – Bittu Singh alias Tiger was the pillion rider. There was a road rage to a place between the deceased-party and the pillion rider with regard proper riding of the vehicles. During such quarrel, co-accused – Bittu Singh had done the deceased to death by opening fire from the pistol and the present petitioner having no role to the same, inasmuch as no overt act is alleged against the petitioner. As in the earlier order it is held that the petitioner caught hold of the deceased and other co-accused fired the same, this Court may review the earlier order looking into the aforesaid fact and submission made, more particularly when the petitioner cannot be attributed to have committed an offence under Section 302 of IPC read with Section 34 of IPC in the aforesaid facts and circumstances of the case.

5. However, learned counsel for the State while not disputing the submission of the learned counsel for the petitioner that the petitioner caught hold of the deceased is not available from the case record, which was one of the consideration to reject the earlier prayer for bail of the petitioner, but it is fallacious to say that the petitioner played absolutely no role in commission of the crime.

6. From the materials available on record, it would go to show that when the altercation took place, co-accused – Bittu Singh alias Tiger gave out to eliminate the deceased and in course of such altercation two other witnesses made effort to subside the matter and also prevented Bittu Singh from committing the crime, the petitioner, who was accompanying the co-accused in connection with trading of illicit 'Ganja' prevented those two

persons and facilitated the commission of the crime to Bittu Singh and also instigating Bittu Singh to cause the death of the deceased. The aforesaid is highly incriminating to the petitioner. Hence, it cannot be said that the petitioner has no role to play in commission of the crime. But, as it appears, the petitioner is in custody since 03.07.2018 and the charge in this case is yet to be framed.

7. Taking note of the aforesaid facts and submissions made, notwithstanding the earlier rejection of the prayer for bail of the petitioner, this Court is of the view that the petitioner in the aforesaid case deserves to be released on bail, more so when no material is produced to show that he would abscond and/or tamper with the prosecution evidence, if released on bail.

8. Hence, this Court directs that the petitioner be released on bail in the aforesaid case by the Court in seisin over the matter on such terms and conditions as deemed just and proper as his release is not likely to have an adverse impact on a free and fair trial anymore.

9. Accordingly, the BLAPL stands disposed of being allowed.

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

(S. Pujahari)
Judge