

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 9553 of 2021

Mara Gagarai @ Dune

....

Petitioner

Mr.S.P.Dash, Advocate

-Versus-

State of Odisha

....

Opposite Party

Mr. S.N.Das, ASC

CORAM:

JUSTICE R.K.PATTANAIK

Order No.

ORDER
10.01.2022

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 Cr.P.C. for grant of bail to the petitioner in connection with S.T. Case No. 37 of 2021 corresponding to C.T. Case No. 579 of 2020 arising out of Mahuldiha P.S. Case No. 54 of 2020 registered under Section(s) 302/34 IPC pending in the Court of learned Additional Sessions Judge, Karanjia on the grounds stated therein.
4. Perused the F.I.R. and the impugned order dated 21.10.2021.
5. Gone through the contents of the F.I.R.
6. Learned counsel for the petitioner submits that there was a quarrel between both the sides and at the time of

occurrence, the deceased was found to be under the influence of alcohol for which he fell down and sustained a head injury and later succumbed to it and as far as the present accused is concerned, he is in judicial custody since 24.10.2021 and in the meantime, charge sheet stands filed and taking into account the circumstances under which the incident happened, he should be enlarged on bail with any conditions.

7. Learned counsel for the State, however, objects to the release of the petitioner on the ground that the involvement of the accused is revealed from the dying declaration which is stated to have been made by the victim to his nephew and niece and the alleged assault has also been witnessed by some of the villagers whose statements have also been recorded under Section 161 Cr.P.C. but admitted that in the meantime, charge sheet has been filed. The statements of the witnesses under Section 161 Cr.P.C. who were present some time before the death of the victim were read out by the learned counsel for the State.

8. It is contended that the deceased was in an inebriated condition and apparently was assaulted by the accused persons but then there has been a single injury on his head. The post mortem report is vis-a-vis the victim is also referred to by the learned counsel for the petitioner stating that it reveals a single injury on the head. It is apprised to the Court that the other accused, who is also involved in the alleged incident besides the petitioner is in judicial custody. The motive or intention behind the alleged assault is not revealed in the F.I.R. From the F.I.R. and the materials on record, it is made to suggest that there was a quarrel between the parties and all of them were under the influence of the alcohol. It is submitted by the learned counsel for the State that the petitioner and other

accused, who were also drunk, said to have physically assaulted the victim for certain reasons. However, from the P.M. report only a single head injury is shown to have received by the deceased.

9. Having regard to the above facts and submissions made and circumstances leading to the death of the deceased and taking into account the fact that all the parties were in a drunken condition and assault was by means of fist blows and kicks and the deceased was found lying on the ground with a head injury in unconscious state, the Court is of the considered view that by taking into account the period of detention, the accused should be allowed to go on bail with conditions and accordingly, it is ordered.

10. In the result, it is directed that the petitioner be released 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 besides with condition that he shall not terrorize or cause any harm to the informant and other family members of the deceased, while on bail and thus, shall not tamper with the evidence, in any manner whatsoever.

11. The BLAPL is accordingly disposed of.

12. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's

Notice No.4587, dated 25th March, 2020 as modified by
Court's Notice No. 4798, dated 15th April, 2021.

(R.K.Pattanaik)
Judge

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