

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.9631 of 2021

Arakhita Kumbhar

....
Petitioner
Mr.R.K. Sahoo, Advocate

-Versus-

State of Odisha

....
Opposite Party
Mr.G.N. Rout, Addl. Standing Counsel

CORAM:
JUSTICE R.K. PATTANAİK

Order No.

ORDER
11.01.2022

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 Cr.P.C. filed by the petitioner for bail in connection with Saintala P.S. Case No.133 of 2021 corresponding to G.R. Case No.130 of 2021 pending in the court of learned Additional Sessions Judge, Titilagarh on the grounds stated therein.
4. Perused the F.I.R. as at Annexure-1 and a copy of charge sheet at Annexure-2 besides the impugned order dated 12.08.2021 i.e. Annexure-3.
5. Gone through the contents of the F.I.R.
6. Learned counsel for the petitioner submits that the present accused has not committed any overt act, inasmuch as, one of the co-accused fired the gunshot, as a result of which, the victim died and considering the fact that the investigation stands closed and in

the meantime, charge sheet is filed in the month of September, 2021 and taking into account the period of detention of the petitioner, who is in judicial custody since 25.5.2021, he should be released on bail with any conditions.

7. Learned counsel for the State, on the other hand, submits that though the gunshot was fired by another accused but it was at the instigation of the petitioner which is, in fact, revealed by a witness before whom an-extra judicial confession was made by one of the accused persons, as revealed from the case diary and therefore, he should not be enlarged on bail.

8. On perusal of the F.I.R., it is made to suggest that the accused persons were intercepted by the victim and the informant, while they were on duty and in course of events, one of the accused fired the gunshot causing his death. The circumstances under which the alleged incident happened stand described in Annexure-1. It is informed to this Court by the learned counsel for the State that the accused persons were proceeding to hunt a wild animal and were intercepted and during the incident, the victim was shot from a gun possessed by one of the accused. It is made to appear that while being intercepted, there was a quarrel between both the sides and at that point of time, one of the accused persons fired the shot from a gun, which is being described by the informant in the F.I.R. Admittedly, the death of the victim is homicidal in nature. In fact, the deceased succumbed to the gun injury after being shifted to hospital. The fact of extra-judicial confession by one of the accused persons has been drawn to the attention of this Court by the learned counsel for the State. But then, it seems that after being stopped, the accused persons had a quarrel with the deceased and the informant and on the spur of the moment, it all happened, whereby, the victim received gunshot

wound which proved to be fatal. It is not a case where there was any pre-plan but then one of the accused persons did fire the victim and committed the alleged mischief which was without any provocation.

9. Having regard to the above facts, circumstances under which the incident happened and the fact that the another accused committed the alleged overt act by firing a gunshot on the victim and the fact that the charge sheet stands filed, the Court is inclined to release the petitioner on bail with conditions.

10. Accordingly, 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, who shall impose such other conditions, as would be deemed just and proper, in the facts and circumstances of the case.

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, 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