

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 9647 of 2021

Santosh Sethi & another

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Petitioners

Mr.Samarendra Mohanty, Advocate

-Versus-

State of Odisha

Opposite Party

Mr.S.N.Das, ASC

CORAM:

JUSTICE R.K.PATTANAIK

Order No.

ORDER

11.01.2022

1. This matter is taken up through video conferencing mode.
2. Heard learned counsel for the petitioners and learned Addl. Standing Counsel for the State.
3. ★ This is an application under Section 439 Cr.P.C. for grant of bail to the petitioners in connection with Dharmasala P.S. Case No. 207 of 2021 corresponding to C.T. Case No. 653 of 2021 pending in the court of learned J.M.F.C., Chandikhole.
4. Perused the F.I.R. and other documents including the impugned order dated 28.10.2021 at Anneuxre-4.
5. Gone through the contents of the F.I.R.
6. Learned counsel for the petitioners submits that on account of a dispute between both the sides a meeting was held during which the parties picked up fight and in course of events both exchanged assault to each other and for that,

counter F.I.R. were registered but due to the assault the victim who sustained the injuries died. It is further submitted that three other accused persons namely, Ramesh Sethi, Prakash Sethi and Nanda @ Bidyadhar Sethi have been released on bail by the orders of this Court in BLAPL No. 5728 of 2021 by order dated 06.08.2021 and in so far as the present accused persons are concerned, they are similarly situated and therefore, parity should be extended and they should as well granted bail on similar terms and conditions which is objected to by the learned counsel for the State on the ground that the deceased was assaulted by them and as far as the petitioner no.1 is concerned, he initiated the assault and gave a blow one to his head by means of a wooden plank as a result of which he fell down with head injury and thereafter.

7. From the F.I.R., it is made to suggest that the parties having a dispute for a drainage issue and for that a meeting was held in the village and all of their present including some outsiders and during that time, the incident happened as in course of events the petitioner no.1 assaulted the victim by means of a wooden plank and thereafter, other accused persons jointly as far as the petitioner nos. 2 to 5 are concerned in there is no specific role against attributed to against them as fairly submitted by the learned counsel for the State. It is further submitted that petitioner no.1 gave a blow on the head of the deceased by means of a wooden plank. The other accused persons were also present at the time of the alleged occurrence and as earlier mentioned, said to have been released by order dated 06.08.2021 in BLAPL No. 5728 of 2021.

8. Prima facie the materials suggests that due to a dispute between both the sides the parties have a fight as the

attacked each other for which a counter F.I.R. was lodged against the present one. As informed to this Court by the learned counsel for the State, the counter case has been registered for minor offences some of which are bailable in nature any how the F.I.R. reveals that the petitioners assaulted the deceased and others. But then a specific role is attributed to petitioner no.1, the P.M. report as is read out by the learned counsel for the State show that the cause of death of the victim seems to be on account of the head injury and complications arising there from. In other words even though the victims received multiple injuries but then the blows with the landed on the head caused by means of a wooden plank at the instance of the petitioner no.1 proved to be fatal.

9. Having regard to the above facts and submissions made by the learned counsel appearing for the parties and the fact that some of the accused persons have been granted bail in BLAPL No. 5728 of 2021 by this Court and the fact that petitioner nos. 2 to 5 appears to be on similar footing like them. The Court is of the considered view that they should be released on bail with conditions. However, the Court is not inclined to grant bail to the petitioner no.1 who said to have assaulted the deceased by means of a wooden plank as a result of which latter sustained head injuries who is being primarily responsible for his death as revealed from the post mortem report.

10. In the result, it is directed that the petitioner nos. 2 to 5 are directed be released on bail on furnishing a bail bond of Rs.40,000/- (rupees forty thousand) each with one solvent surety for the like amount each to the satisfaction of the learned court below in seisin over the matter with conditions that they shall not pick up any quarrel, fight and cause any harm to the

informant and other victims in any manner, whatsoever, while on bail; in so far as the plea of bail vis-à-vis the petitioner no.1 is concerned, stands rejected.

11. The BLAPL is accordingly disposed of in the above terms.

13. 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, and Court's Office Order circulated vide Memo Nos. 5143 and 515 dated 7th January, 2022.

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