

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.611 of 2021

Lucky Jena

.... ***Appellant***
Mr. S.P. Das, Advocate

-versus-

State of Odisha

.... ***Respondent***
Mr. M.K. Mohanty, ASC

CORAM:
JUSTICE A.K.MOHAPATRA

ORDER
19.04.2022

Order No.
03

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. Heard learned counsel for the Petitioner as well as learned counsel for the State.
3. The present appeal has been filed challenging the order dated 28.09.2021 passed by the learned 2nd Additional Sessions Judge-cum-Presiding Officer. Children's Court, Berhampur, Ganjam in Case No.J.R.32 of 2021 arising out of Badabazar P.S. Case No.93 dated 01.07.2017 thereby while dismissing the application for bail of the appellant/juvenile conflicts with law.
4. The prosecution case, in brief, is that on 01.07.2017 one K. Krishna Rao @ Muna of 1st Gate, Burma Colony, lodged a written reported in Badabazar Police Station alleging that on the very same day evening at about 8.45 P.M., he received information over telephone from his wife K. Rina that her brother, namely, Upendra Behera @ Bubu has been attacked by bombs and kati at his betel

shop situated at 1st Gate and he is being taken to hospital. Therefore, the informant immediately rushed to the hospital and after sometime Bubu expired. Another person, namely, Santosh Patra @ Pila, who had also sustained injuries in his persons in the incident informed that at betel shop of the deceased Bubu, Anil Reddy came and first threw a hand bomb, namely, Balaji Sethy, CCL, Pupun Mahanty, Deepak Singh conjointly chased Bubu and assaulted him successively by means of kati as a result of such assault the deceased fell down on the ground. Thereafter, the deceased managed to escape towards Pana Sahi, Dhoba Bandha. On the basis of information provided by the informant, the present appellant was also involved in the alleged commission of offence punishable under Sections 326/307/302/120-B/147/1485/149, I.P.C. read with Section 25(1-B)(b) of the Arms Act and Sections 3 and 4 of the E.S. Act.

5. It is submitted by learned counsel for the appellant that the appellant is languishing in jail custody since 02.07.2017 and in the meantime, investigation has been concluded and charge-sheet has been submitted. He further submits that the trial has commenced. Out of 38 witnesses, eight witnesses have been examined by the trial court. However, he expresses his apprehension that the trial may not be concluded in near future.

6. Further, learned counsel for the appellant submits that the appellant is a juvenile, who is entitled to get the benefit of Juvenile Justice Act and that the CCL is in custody for a long time, which affects the mental condition of the CCL. He also submits that one co-accused, namely, Santosh Panigrahi @ Ichili has already been released on bail by this Court in BLAPL No.3922 of 2021 by order dated 03.01.2022. Further, learned counsel for the CCL submits that

there is omnibus allegation against the CCL and he has no specific allegation of overt-act made against the CCL. It is further contended by learned counsel for the CCL that the CCL was carry out the words of hardcore criminal of the locality and as such, he is entangled in this case. It is also submitted that there is no other criminal antecedents and there is no chance of absconding of the appellant and that taking into account his period of detention, he may be released on bail.

7. Learned counsel for the State, on the other hand, submits that nature of allegation against the CCL is very serious in nature and he further submits that in view of Section 12 of the J.J. Act safety of the CCL is first priority. He further submits that the CCL may not be safe if he is in jail and allow him to live in the locality. On such grounds, learned counsel for the State objects the bail of the CCL.

8. It is not disputed that the CCL is not received proper care and from his family particularly his parents. Therefore, he needs counseling or supervision.

9. On query, learned counsel for the State submits that the CCL has no criminal antecedents.

10. Considering the submissions made by learned counsel for the appellant, keeping in views the provision under Section 12 of the 2015 Act, the period of detention of the appellant in the Observation Home and absence of any material that while on bail the appellant is likely to come in association with any known criminal or will be exposed to moral, physical or psychological danger or his release

would defeat the ends of justice, I am inclined to release the appellant on bail.

11. Accordingly, the appellant is directed to be released on bail on his father or any family member executing personal bond for a sum of Rs.30,000/-(rupees thirty thousand) with two solvent sureties each of the like amount to the satisfaction of the learned 2nd Additional Sessions Judge-cum-Presiding Officer. Children's Court, Berhampur, Ganjam and also on filing an affidavit by such family member before the concerned Court to the effect that:-

- I. The petitioner shall be responsible for the well-being of the appellant;
- II. he shall ensure that the appellant does not fall into bad company; and
- III. he shall ensure the presence of the appellant before the learned 2nd Additional Sessions Judge-cum-Presiding Officer. Children's Court, Berhampur, Ganjam on each date when the case would be posted for inquiry.

12. With the aforesaid observation, the impugned order dated 28.09.2021 passed by the 2nd Additional Sessions Judge-cum-Presiding Officer. Children's Court, Berhampur, Ganjam in the aforesaid case is set aside.

13. The CRLA is accordingly allowed.

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

(A.K. Mohapatra)
Judge