

IN THE HIGH COURT OF ORISSA AT CUTTACK
BLAPL No.9731 of 2021

Dillip Kumar Sahu

....

Petitioner

Mr. B.B. Routray, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. J. Katikia, AGA

CORAM: JUSTICE S.K. PANIGRAHI

ORDER

28.02.2022

Order No.

02. 1. The 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 connection with Bantala P.S. Case No.43 of 2021 corresponding to C.T.(S) Case No.24 of 2021 of the court of learned Addl. Sessions Judge, Angul for the commission of offence under Sections 379, 304 of the IPC read with Section 135 of the Electricity Act has filed this application under Section 439 of the Cr.P.C. for his release on bail.
4. The prosecution case, as narrated in the FIR, is that, in order to haunt wild animals the petitioner had laid open G.I. wires on his land. The informant's son-in-law namely Mohan Rajpur had been to his agriculture field in order to fetch water and on the way he came in contact with the charged electric wires on the petitioner's field and died on the spot.
5. Learned counsel for the petitioner submits that the petitioner has been in custody since 17.02.2021 and there is no direct allegation

against the petitioner. He further submits that on the date of incident, someone scattered electric wire near the agricultural land of the petitioner in order to hunt wild animals and unfortunately, the deceased came in contact with the electric wire and died. Charge-sheet has been filed. So, the petitioner may be released on bail with any terms and conditions.

6. Learned counsel for the State opposes the bail prayer of the petitioner.

7. Criminal jurisprudence dictates that doing an act with the intent to kill a person or knowledge that doing an act was likely to cause a persons' death is culpable homicide and thereby be brought under Section 304. For an act to constitute 'culpable homicide', either intention or knowledge has to be the motivating force for committing the alleged act. Moreover, coming to the plea of the applicability of Section 304A of the IPC it is to be noted that the said provision relates to death caused by negligence. Section 304A of the IPC applies to cases where there is no intention to cause death and no knowledge that the act done in all probabilities will cause death. In the present case, 'intention' as an ingredient is not present in the alleged act. Further, the petitioner does not seem to have the knowledge that the act done in all probabilities will cause death. However, it is pertinent to note that the petitioner has failed to take precautionary measures to prevent accidents due to the presence of electric wires. Hon'ble Supreme Court in the case of **State of**

Rajasthan vs Chittarmal¹, the facts of which are similar to the present case, iterated that:

“12. The High Court found that the so called judicial confession was not established while the other aspects were clearly established. The probability of the defence version is borne out from several factors; firstly two poles were placed to which wire was fastened. In fact this aspect has been clearly taken note of by the trial court but it was concluded that merely because the wooden poles were there that did not establish the defence plea that the same was intended to keep away wild animals. High Court found that the prosecution itself accepted that two sticks were fixed. There was also seizure of the wooden sticks which aspect was also accepted by the trial court.

13. In view of the analysis made by the High Court, the inevitable conclusion is that prosecution has not been able to establish the accusation under Section 302 IPC and the High Court rightly convicted the accused under Section 304A IPC.”

8. Keeping in view the aforesaid consideration and the facts of the case, the BLAPL is allowed. However, the aforesaid discussions on law shall not come in the way of a fair trial of the case in hand.

9. Let the petitioner be released on bail in the aforesaid case on such terms and conditions as deemed just and proper by the court in seisin over the matter with further conditions that:-

- i. petitioner shall appear before the court on each date of posting of the case;
- ii. he shall not indulge in any kind of criminal activity during bail period; and

¹ (2007) 10 SCC 792

iii. he shall not tamper with the evidence of prosecution witnesses in any manner and shall not terrorize the prosecution witnesses.

10. Violation of any of the conditions shall entail cancellation of bail.

11. The BLAPL is disposed of.

12. Urgent certified copy of this order be granted as per rules.

(S.K. Panigrahi)
Judge

pcd

