

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3391 of 2022

Suresh Kumar Bhujabal

.... **Petitioner**
Mr. B. Pujari, Advocate

-Versus-

State of Odisha

.... **Opposite Party**
Mr. T.K. Praharaj, SC

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
05.12.2022

Order
No.
01.

1. Heard learned counsel for the petitioner and learned counsel for the State.
2. The criminal proceeding in connection with G.R. Case No.205 of 2022 corresponding to Itamati P.S. Case No.77 of 2022 pending in the file of learned S.D.J.M., Nayagarh is under challenge.
3. A copy of the FIR is at Annexure-1.
4. Mr. Pujari, learned counsel for the petitioner submits that initially after the FIR was lodged, Itamati P.S. Case No.77 of 2022 was registered under the IPC offences besides Sections 25 & 27 of the Arms Act and Sections 3 & 4 of the Explosive Substances Act, however, at the end on completion of investigation, the offences of the Special Acts has been deleted. It is further submitted that there is discrepancy in so far as the statements of the witnesses in juxtaposition to the FIR, a copy of which is at Annexure-1 with regard to the manner of assault as it has been claimed that the

petitioner was assaulted by means of a 'kati', whereas, the same is in contradiction to the statements recorded under Section 161 Cr.P.C. which reveal that it was by means of a 'lathi'.

5. On such a ground, Pujari, learned counsel for the petitioner submits that the allegation appears to be falsehood and therefore, the proceeding should be quashed which is objected to Mr. Praharaj, learned counsel for the State on the ground that such a question of fact to be determined during enquiry and trial and cannot be a basis or foundation for quashing of the criminal proceeding.

6. Whether assault was means of 'kati' and 'lathi', it is question to be examined during trial and being clearly factual cannot be entertained in a proceeding under Section 482 Cr.P.C. so as to quash the criminal proceeding which has been prayed for. On the other words, it is not a fit case where such jurisdiction should be exercised to quash the proceeding corresponding to Itamati P.S. Case No.77 of 2022 pending before the learned court below.

7. At this juncture, Mr. Pujari, learned counsel for the petitioner submits that since the Court is not inclined to quash the criminal proceeding, at least the petitioner should be granted liberty to raise all the legal points at the time of framing of charge and also a direction for him to surrender before the learned court below and released on bail on any conditions which is also objected to by Mr. Praharaj, learned counsel for the State.

8. Having regard to the above facts and submissions of the respective parties and the fact that the injuries received by the victim appear to have been caused by a hard and blunt object although

grievous in nature which is evident from Annexure-4 series, the Court is of the opinion that all such questions to be determined during the trial and for that purpose the petitioner should appear and defend himself. As informed to the Court that the NBWA is pending execution vis-à-vis the petitioner, the Court is of the further view that he should be directed to surrender and allowed to go on bail.

9. Accordingly, it is ordered.

10. In the result, CRLMC stands disposed of with a direction to the petitioner to surrender before the learned S.D.J.M., Nayagarh on or before 22nd December, 2022 in connection with G.R. Case No.205 of 2022 arising out of Itamati P.S. Case No.77 of 2022 and in the event he surrenders, the court below shall release him on bail on conditions as deemed just and proper in the facts and circumstances of the case. The petitioner is also granted the liberty to raise all such factual and legal points as available to him under law while seeking discharge and in the event, any such application so moved by him, the learned Sessions court shall do well to pass appropriate order thereon as per and in accordance with law.

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

(R.K. Pattanaik)
Judge