

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No. 14671 of 2022

Rama Kandi @ Rama Chandra* *Petitioners
Kandi & another

Mr. A. Tripathy, Advocate

-versus-

State of Odisha* *Opp. Party

Mr. S. Patra, ASC

CORAM:
JUSTICE CHITTARANJAN DASH

ORDER
14.12.2022

Order No.

02. 1. Heard learned counsel for the Petitioners and learned the State.
2. This is an application for bail U/s. 438 Cr.P.C. filed by the Petitioners in apprehension of arrest for their alleged involvement in the offences U/s. 341/294/323/324/325/506/34/354 of IPC.
3. It is submitted by learned counsel for the Petitioners that the death of the deceased is not the result out of the assault but push being given by Premananda Kandi. The deceased fell on the road and received injury to which she succumbed. It is further submitted by the learned counsel for the Petitioners that the FIR as reveals, the present Petitioners simply to have interfered with the wearing apparels of Sasmita Parida besides a threat whereas the deceased thereafter went to the house of Premananda Kandi and while was explaining the incident got the push from Premananda. Nothing appears from the statement of the witnesses whereby it could be

inferred that the present Petitioners are in any way responsible for the cause of death of the deceased. Learned counsel for the Petitioners also submits that the principal accused Premananda Kandi has since been released on bail so also the co-accused persons and as such prays to consider the anticipatory bail of the Petitioners.

4. Learned counsel for the State on the other hand opposed the prayer for pre-arrest bail of the Petitioners.

5. Perusal of the FIR reveals that the Petitioners along with Bharat Chandra Kandi, Premananda Kandi, Kanaka @ Kamala Kandi and Jhuna Kandi in furtherance to their common intention hurled abuse to Sasmita and her mother-in law China, the deceased. They too gave leg and fist blows and interfered with their wearing apparels. Subsequently, the mother-in-law of Sasmita, namely, China (the deceased) had been to the house of Premananda Kandi and explained him the incident whereupon Premananda Kandi pushed her whereby she fell down on the road and sustained injuries and succumbed to it.

6. Prima-facie, therefore, the death of the deceased does not have any direct nexus with the overt act shown by the present Petitioners. It is the second phase of the incident whereby the deceased had been to the house of Premananda Kandi and fell down on the push given by Premananda that she sustained injuries.

7. Statement of the witnesses recorded U/s. 161 of the Cr.PC also reiterates the same. It is for this reason that the initial injury detected in the deceased is simple which is a lacerated injury and

bruises. The Post Mortem report reveals the death is due to cranial cerebral injury sustained due to blunt trauma injury to head.

8. It is submitted by the learned counsel for the Petitioner that the co-accused persons more particularly Premananda Kandi whose push resulted the fall of the deceased on the road leading to injuries to which she succumbed has since been released on bail having taken to custody.

9. Keeping in view the submission of the parties, having gone through the nature of allegations as emerged from the material on record, further the circumstances appearing, the seriousness and gravity of the offences, while this Court is not inclined to grant anticipatory bail, the petitioners are at liberty to surrender before the learned J.M.F.C., Ranpur in Ranpur P.S. Case No.05 of 2022 of 2022 corresponding to G.R. Case No.06 of 2022 within three weeks from today and move for bail. In such event the learned court in seisin over the matter shall consider the bail application of the Petitioners in the first hour of the day, strictly on the basis of the materials available on record in its own merit.

10. In case of rejection of the bail application by the learned court, the Petitioners may move for bail before the higher forum in the second hour of the same day. In that event, the higher forum shall consider and dispose of the bail application of the Petitioners on the same day on its own merit. It is made clear that the learned court below shall not be influenced by any of the observations of this court made herein above in any manner.

11. Case diary be made available to the learned courts below as soon as possible to facilitate disposal of the bail application of the Petitioners on the same day.

12. Court has to apply its own wisdom in dealing with the application for bail. The ABLAPL is disposed of.

(Chittaranjan Dash)
Judge

AK Pradhan

