

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL NO.10486 OF 2021

Khyamasagar Bisoi

.... ***Petitioner***
Mr. T.K. Mishra, Advocate

-versus-

State of Odisha

.... ***Opposite Party***
Mr. S.K. Nayak, AGA.

CORAM:
MR. JUSTICE D.DASH

ORDER
21.01.2022

Order No.

01. 1. This matter is taken up by video conferencing mode.
2. The Petitioner being in custody in connection with B.Singhpur P.S. Case No. 121 of 2021 corresponding to G.R. Case No.243 of 2021 on the file of learned J.M.F.C., Borigumma running for commission of offence under section 147/148/307/302/506/149 of the IPC, has filed this application under section 439 of the Cr.P.C. for his release on bail in the above mentioned case.
3. Learned Counsel for the Petitioner submits that as per the prosecution allegation, this Petitioner and other co-accused persons in total numbering five (5) having gone near the deceased carrying deadly weapons indiscriminately assaulted him and another. He further submits that although all the accused persons are have said to have assaulted the deceased, it is not stated that which accused played what role or held what type of weapon. He submits that all the accused persons arraigned in the case hail from one family and as per the

prosecution case, they were in enmity terms and as such not pulling well. It is submitted that this Petitioner Khyamasagar is the youngest of all the accused persons and therefore he having followed the path of elder members of the family, in the absence of any specific allegation that he gave the fatal blow upon the deceased or the blow(s) of any vital part of the body of the deceased; his detention in custody when investigation of the case is complete and there remains no scope on the part of the Petitioner to flee from justice and tamper the evidence is not warranted. He further submits that all the elder male members of the family of the deceased having been arrested in the case are in custody and therefore it is now extremely difficult, rather unmanageable on the part of the female members of the family to maintain the day today household affairs and their living. In view of all these above; he urges for grant of bail to the Petitioner who has been languishing in custody since the mid of September, 2021.

4. Learned Counsel for the State opposes the move. According to him, the stage is too premature to take a view that this Petitioner being the youngest of all the accused persons is not involved in giving fatal blow(s) upon the deceased. He submits that although none have specifically stated as to which accused was carrying what weapon and as regards details as to the assault made by them upon the deceased yet in the peculiar fact situation that is quite normal for the eye witnesses being not able to state so.

4. Taking into account the submissions made; further keeping in view the materials on records with other surrounding circumstances as also the period of detention of the Petitioner in custody and on going through the order passed by the learned Addl. Sessions Judge-cum-Special Judge; in the absence of any such impediment; it is directed that 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 of the case with further conditions that:-

1. he will not indulge himself in any criminal activity;
2. will not threaten or terrorize the prosecution witnesses in any manner; and
3. will appear before the Court in seisin of the case on each date of posting of the case without fail.

5. The BLAPL is accordingly disposed of.

6. 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.514 and 515 dated 7th January, 2022.

**(D.Dash),
Judge.**