

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 11058 of 2021

Dillip Kumar Sharma

....

Petitioner

*Mr. Tusar Kumar Mishra,
Advocate*

-Versus -

State of Odisha

Opposite Party

....

*Mr.S.K. Mishra,
Additional Standing Counsel
Mr. L. Mishra, Advocate
(For informant)*

CORAM:

JUSTICE SASHIKANTA MISHRA

O R D E R

27.07.2022

Order No.

10.

1. This matter is taken up through hybrid mode.
2. Heard Mr. T.K. Mishra, learned counsel for the petitioner, Mr. S.K. Mishra, learned Additional Standing Counsel for the State and Mr. L. Mishra, learned counsel appearing for the informant.
3. The petitioner is in custody since 10.03.2021 in connection with Plantsite PS. Case No.44 of 2021 corresponding to G.R. Case No. 189 of 2021 pending in the court of learned S.D.J.M., Panposh, Rourkela for the alleged commission of offence under Sections 302/120(B)/34 of IPC.
4. As per the prosecution case, one Kailash Kumar Agarwal lodged FIR before the IIC of Plantsite Police Station, Rourkela on

10.02.2021 informing that while he was present at home, hearing a loud sound he ran towards the source and found his elder brother Sajan Kumar Mittal lying on the entrance of the ground floor of the house being seriously injured with profuse bleeding from the back of his head. Thereafter, he along with his son Ayush and other neighbours shifted the injured to Ispat General Hospital for treatment, but around 2.00 a.m., the hospital authorities declared him dead. According to the informant, someone had killed his brother.

5. Basing on the FIR, Rourkela Plantsite Case No. 44 dated 10.02.2021 was registered under Section 302 of IPC and investigation was taken up. In course of investigation, a big conspiracy was revealed. As per the said conspiracy, one Prem Kumar Agarwal@ Modi had entrusted the work of getting the shop room occupied by the deceased vacated to Dillip Kumar Sharma (petitioner) who, in turn hired some contract killers to kill the deceased. The said contract killers eventually killed the deceased by shooting him from a country made pistol and by assaulting him by means of an iron hammer. The above facts having come to light, the said Prem Kumar Agarwal@Modi, the contract killers, namely, Rajat Biswakarma and Suresh Kumar Jha besides Rajesh Singh, Neel Paul and Aman Prasad were arrested including the petitioner and taken to custody.

6. It is argued by Mr. T.K. Mishra, learned counsel for the petitioner that the petitioner has been taken to custody entirely on suspicion and that there is no acceptable evidence to show his complicity in the alleged occurrence. It is further argued that a

person cannot be implicated on the basis of his own confession before the police. Except for the so called confessional statement, there is absolutely no material to show the complicity of the petitioner in the alleged occurrence. It is further submitted that even otherwise charge sheet having been submitted and the petitioner having spent more than one and half years in custody deserves to be released on bail.

7. Mr. S.K.Mishra, learned State Counsel has opposed the prayer for bail by submitting that the petitioner is the master mind of the entire operation, as he had been engaged by one Prem Kumar Agarwal@Modi to vacate the shop rooms in Diwedi market complex. Prior to that the petitioner had contacted Prem Kumar Agarwal @Modi and induced him to purchase the property belonging to one Biren Kumar Pati, i.e, Diwedi market complex at a lower price for which he took commission of Rs. 10 lakhs. The petitioner assured the purchaser Prem Kumar Agarwal @ Modi to vacate all the shopkeepers from the said market complex for a commission of Rs.10 lakhs and also managed to vacate most of the shop rooms. However, he could not vacate the shop rooms of Sajan Kumar Mittal (deceased) and his brother who demanded huge amount for vacating the same. Since Prem Kumar Agarwal@Modi refused to pay the commission to the petitioner unless he got the shop rooms vacated, the petitioner forcibly tried to evict the deceased and his family members from the shop rooms by dismantling the roof, for which there was physical tussle between them and two separate criminal cases were registered in Plantsite police station against both the parties. Feeling humiliated

thus, the petitioner decided to take revenge on the deceased and accordingly, conspired with Prem Kumar Agarwal @ Modi to kill the deceased by engaging professional killers. Accordingly, the petitioner contacted some noted criminals promising them to pay Rs.2,50,000/- for the purpose and paid Rs.40,000/- as advance. The criminals so contacted, namely, Neel Paul and Rajesh Singh entrusted the work to one Rajat Biswakarma and Suraj Jha who actually gave effect to the plan by killing the deceased. It is submitted that all the above facts have come to light from the confessional statement of the accused before police as also from the call detail records of the mobile phones used by the petitioner and the co-accused persons. Thus, there is clear evidence of criminal conspiracy as also motive for the petitioner to kill the deceased.

8. Mr. L. Mishra, learned counsel appearing for the informant has vehemently objected to the prayer for bail by submitting that the call detail records and own confession of the petitioner are adequate to proof of his role in the occurrence. He further submits that conspiracy cannot always be proved by direct evidence and therefore, there being other evidence in the form of call detail records showing multiple calls being exchanged between the petitioner and the co-accused persons before the occurrence as also evidence of previous enmity between the petitioner and the deceased, even the confessional statement can be accepted.

9. As it appears, the case is based on circumstantial evidence. There is proof that the petitioner was involved in a criminal case registered under Sections 447/294/354/323/427/406 of IPC., a few

months prior to the occurrence on the allegation of having a quarrel and tussle with the deceased. There is also some evidence in the form of call detail records of the mobile phone of the petitioner and the co-accused persons, which suggests that there was frequent contact among them prior to the occurrence. Added to the above is the confessional statement of the petitioner himself. Though the confessional statement cannot be taken into consideration, being hit by the provisions of Section 24 of the Indian Evidence Act, yet it must be kept in mind that according to the prosecution, the petitioner is the conspirator. Obviously, there may not be direct evidence of conspiracy. It is something that can be inferred from the surrounding circumstances. In the instant case, there is prima facie evidence that there was animosity between the petitioner and the deceased prior to the occurrence, resulting in registration of a criminal case in which charge sheet has been submitted. There is also prima facie evidence of multiple telephonic contacts between the petitioner and the other accused persons including the actual perpetrators of the crime. Under the above circumstances, the so called confession made by the petitioner cannot entirely be thrown out from consideration. The co-conspirator, namely, Prem Kumar Agarwal who is said to have funded the entire operation has been denied bail by this Court as per order passed in BLAPL No. 3502 of 2021.

10. Taking into consideration all the above facts therefore, the involvement of the petitioner in the occurrence, prima facie, cannot be ruled out. Therefore, considering the seriousness of the accusations, the manner in which the offence was committed, the

severity of punishment likely to be imposed in case of conviction as also the antecedents of the petitioner which suggests the possibility of his tampering with the evidence, this Court does not consider it a fit case to exercise judicial discretion in favour of the petitioner by releasing him on bail. For the above reasons therefore, I am not inclined to allow the prayer for bail, which is therefore rejected. It is open to the petitioner to renew his prayer after examination of the material witnesses in the case.

11. The BLAPL is accordingly rejected.

(Sashikanta Mishra)
Judge

B.C. Tudu

