

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL NO.11243 OF 2021

Brahmadi Naik

.... ***Petitioner***
Mr. N. Panda, Advocate

-versus-

State of Odisha

.... ***Opposite Party***
Mr.D.R. Parida, ASC.

**CORAM:
MR. JUSTICE D.DASH**

ORDER
04.05.2022

Order No.

03. 1. This matter is taken up by through hybrid arrangement (virtual/physical) mode.
2. This is the second journey of the Petitioner, who is in custody in connection with Puruna Katak P.S. Case No.43 of 2018 corresponding to S.T. case No.82 of 2018 arising out of C.T. Case No.233 of 2018 pending on the file of learned Addl. Sessions Judge-cum-Special Judge, Boudh running for the alleged commission of offence under section-302 of the IPC, in filing this application under section 439, Cr.P.C., for reconsideration of the prayer for grant of bail to the Petitioner.
3. Learned Counsel for the Petitioner submits that the case against the Petitioner is based on circumstantial evidence and the circumstances projected by the prosecution are only two; first one that the deceased was last seen in the company of the Petitioner and the next one is that the Petitioner has given recovery of a lathi while in police custody. According to him, in the absence of any such evidence to connect that lathi with

the commission of offence with the evidence on record in support of the last seen theory, prima facie the chain is not getting complete so as to rule out all such hypothesis other than the guilt of the family members who are dependent upon the Petitioner. It is also submitted that the Petitioner having somehow managed to continue till this now, it is no more possible for them without the help of the Petitioner and he further submits that the Petitioner being a permanent resident of the district of Nayagarh, the question of fleeing from justice does not arise and when most of the witnesses have already been examined in the trial, there too arises no scope for the Petitioner to tamper with the evidence. In view of all these above; he urges for reconsideration of the prayer for grant of bail to the Petitioner on such terms and conditions as deemed just and proper.

4. Learned counsel for the State opposes the move. According to him, when the trial is going on, it is not the stage to take a view with regard to acceptability of the evidence of the prosecution witnesses and it is not permissible. He submits that the Petitioner been last seen in the company of the deceased when having not explained the whereabouts of the deceased and when it is seen that the external injuries leading to death are possible by lathi, prima facie the charge stands established.

5. Taking into account the submissions made; further keeping in view the surrounding circumstances especially, the period of detention of the Petitioner in custody and non-consideration of the trial where some important witnesses have

already been examined; while being inclined to reconsider the prayer for grant bail to the Petitioner in the aforesaid case, it is directed that the Petitioner be released on bail on such terms and conditions as deemed just and proper by the Court in seisin of the case with further conditions that:-

1. Petitioner will appear in person before the Court in seisin of the case on each date of posting of the case till conclusion of the trial;
2. will appear before the IIC, Purunakatak P.S. every first Monday of the month in between 10 am to 2 pm till conclusion of the trial.
3. will not threaten or terrorise the prosecution witnesses in any manner; and
4. will not leave the jurisdiction of the Court in seisin of the case.

Violation of any of the condition(s) shall entail cancellation of bail.

5. The BLAPL is accordingly disposed of.
Issue urgent certified copy as per rules.

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

Narayan