

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 11325 of 2021

Titam Mirdha

....

Petitioner

Mr. S.S. Pattanaik, Advocate

Versus

State of Orissa

....

Opposite Party

Mr. S.S. Pradhan, A.G.A.

CORAM:

JUSTICE SAVITRI RATHO

ORDER

25.04.2022

Order No.

- 02.
1. This matter is taken up through hybrid mode.
 2. Heard Mr. S.S. Pattanaik, learned counsel for the petitioner and Mr. S.S. Pradhan, learned Addl. Govt. Advocate for the State.
 3. This is an application under Section 439 of Cr.P.C. for grant of bail to the petitioner- Titam Mirdha in connection with Attabira P.S. Case No.41 of 2020 corresponding to C.T. Case No. 41 of 2020 in the Court of the learned Nyadhikari -cum- J.M.F.C., Attabira now pending as C.T. Case No. 55/72 of 2020-21 in the Court of the learned District and Sessions Judge, Bargarh where charge has been framed against the petitioner and three others for commission of offence punishable under Sections 302/201/34 of the IPC.
 4. This is the second journey of the petitioner to this Court seeking bail. He was one of the petitioners in BLAPL No.738 of 2021 which has been disposed of on 01.07.2021 wherein the prayer for bail of the co-accused Mithun @ Chakradhar Mirdha had been allowed while prayer for bail of the petitioner was rejected but he had been granted liberty to move the learned Court below for bail afresh after examination of Ghasia Oram. His prayer for bail having been rejected by order dated 01.12.2021 by the learned Additional Sessions Judge, Bargarh, he has filed this application under Section 439 Cr.P.C.

The depositions of P.W.1 Ghasia Oram, P.W.2 Tuna Mirdha and P.W.3 Fakira Mirdha have been annexed to the bail application.

5. Mr. S.S. Pattanaik, learned counsel for the petitioner submits that three prosecution witnesses have been examined during the trial. P.W.1-Ghasia Oram has been examined on 22.11.2021 and he has only made a bald statement that the present petitioner had come near him and said that they had killed the deceased Udhaba Khadia and that he knows nothing else. P.W.2 Tuna Mirdha and P.W.3 Fakira Mirdha have denied direct knowledge about the incident. He further submits that the basis of implication of the petitioner is his confession before P.W.1 Ghasia Oram his evidence is not sufficient to convict him and as the petitioner is in judicial custody since 23.02.2020 and is willing to abide by any conditions which may be imposed while releasing him on bail, his prayer for bail may be favourably considered.

6. Mr. S.S. Pradhan, learned Addl. Govt. Advocate for the State opposed the prayer for bail stating that since trial has started, release of the petitioner on bail may delay completion of the trial.

7. I have perused the statements of P.W.1 Ghasia Oram, P.W.2 Tuna Mirdha and P.W.3 Fakira Mirdha. P.W.1 has been cross-examined by the prosecution as per the provisions of Section 154 of the Indian Evidence Act, but he has denied that he has stated before the police that the petitioner had told him that he along with Mithun Mirdha, Balaji Mirdah and Sukuru Mirdha had a quarrel with the deceased on 01.02.2020, pursuant to which they had assaulted the deceased and thrown his body in the canal near their village and that on 03.02.2020 the dead body of the deceased was found at Amlipalli ghat of the canal and that he had also ascertained from an enquiry made by him from the other villagers that the accused persons had thrown the body of the deceased in the canal after assaulting him. P.W. 2 Tuna Mirdha has stated that he has no direct knowledge about

the incident and few days after the occurrence, he had come to know from discussions in our village that the accused persons had killed the deceased and P.W.3 Fakira Mirdha has stated about recovery of the dead body of the deceased near Amlipalli ghat of Bargarh main canal and that he had heard that the accused persons had thrown the body of the deceased in the canal after assaulting him and that he knows nothing else about this case.

8. Considering the submissions of learned counsel for the respective parties, the nature of accusation against the petitioner, release of other co-accused persons on bail, the period of detention of the petitioner in judicial custody and the statements of the witnesses referred to above, I am inclined to allow this application for bail.

9. Let the petitioner- Titam Mirdha be released on bail on such terms and conditions as may be fixed by the learned Court below in seisin over the matter, including the following conditions:-

- i). He will not threaten or attempt to influence the witnesses.
- ii) He will not indulge in any criminal activity while on bail.
- iii) He will appear on each date before the trial Court when the case is posted for trial.

10. Observations in this order are for the purpose of considering the bail application, and should not influence the trial Court in any manner during the trial

11. The BLAPL is accordingly allowed.

12. Urgent certified copy of this order be granted on proper application.

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(Savitri Ratho)
Judge