

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.11565 of 2021

1. Rajendra Pal @ Bhola

2. Prasant Senapati @

Dadu @ Piku

.... Petitioners

Mr.S.S. Das, Senior Advocate

-versus-

State of Odisha

.... Opp. Party

Mrs. Susamarani Sahoo,

Addl. Standing Counsel

**CORAM:
JUSTICE S.K. SAHOO**

**ORDER
17.03.2022**

Order No.

03. This matter is taken up through Hybrid arrangement (video conferencing/physical mode).

Heard Mr. Sourya Sundar Das, learned Senior Advocate for the petitioner no.2 Prasant Senapati @ Dadu @ Piku and learned counsel for the State.

This is an application for bail under section 439 of Cr.P.C. in connection with Plantsite P.S. Case No.350 of 2020 corresponding to S.T. Case No.64 of 2021 pending in the Court of learned 1st Additional Sessions Judge, Rourkela for offences punishable under sections 147/148/149/302/120-B of the Indian Penal Code.

The petitioner no.2 moved an application for

bail before the Court of learned 1st Additional Sessions Judge, Rourkela, which was rejected on 15.12.2021.

Learned counsel for the petitioner no.2 submitted that earlier the petitioner no.2 approached this Court in BLAPL No.3078 of 2021 which was withdrawn as per the order dated 03.11.2021.

Mr. Sourya Sundar Das, learned Senior Advocate for the petitioner no.2 submitted that the petitioner no.2 is in judicial custody since 01.11.2020 and he has been charge sheeted under sections 147/148/302/149 read with section 120-B of the Indian Penal Code. The occurrence in question took place on 30.10.2020 and there are no eye witnesses to the occurrence. He further submitted that there are two deceased persons in this case, namely, Prakash Sethi and Sagar Ray. Sagar Ray died on the next day of occurrence i.e., on 31.10.2020 whereas deceased Prakash Sethi died fourty two days after the occurrence. The main material available against petitioner no.2 is that while the deceased Sagar Ray was being shifted to the hospital in an auto rickshaw, he made oral dying declaration before his father Premnath Ray, brother Pruthiv Ray, one Prakash Ray and the auto driver Bijay Prasad. It is the contention of the learned counsel that on a careful perusal of the oral dying declaration before different witnesses, it would appear that the number of accused persons

who participated in the assault of the deceased vary from each other and since only nick name has been uttered in the oral dying declaration, it cannot be said with certainty that the deceased was referring to the petitioner no.2 without any other clinching material to that effect. He further submitted that in view of the available materials on record and the period of detention of the petitioner no.2 in judicial custody and the fact that there is no progress in the trial, the bail application may be favourably considered.

Mrs. Susamarani Sahoo, learned Addl. Standing counsel for the State opposed the prayer for bail and placed the statements of all the four witnesses before whom the oral dying declaration was made. It is her contention that at the instance of petitioner no.2, one stick was recovered basing on his statement recorded under section 27 of the Evidence Act. She submitted that since it is a case of double murder, the petitioner no.2 should not be released on bail.

Considering the submissions made by the learned counsel for the respective parties, the nature of accusation against the petitioners, absence of any direct evidence, the fact that the number of participants in the assault of the deceased vary in the dying declaration made before different witnesses so also prosecution has not brought on record any clinching material to show that by nick name, the deceased Sagar Ray was referring to the petitioner

no.2 in his oral dying declaration and further taking into account the period of detention of petitioner no.2 in judicial custody, I am inclined to release the petitioner no.2 on bail.

Let petitioner no.2 be released on bail in the aforesaid case on furnishing bail bond of Rs.50,000/- (rupees fifty thousand) with two local solvent sureties each for the like amount to the satisfaction of the learned Court in seisin over the matter with further conditions as the learned Court may deem just and proper including the further conditions that he shall appear before the learned trial Court on each date to which the case would be posted for trial and shall not try to tamper with the evidence. Violation of any of the conditions shall entail cancellation of bail.

The BLAPL is accordingly disposed of.

Issue urgent certified copy as per Rules.

संक्षिप्त न्यायो

ORISSA

(S.K. Sahoo)
Judge