

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.11615 of 2021

***Susanta Kumar Dhalsamta &
another***

.... Petitioners

M/s.S.K.Padhy, Advocate

-versus-

State of Orissa

.... Opp. Party

M/s.S.S.Pradhan, A.G.A.

CORAM:

JUSTICE G. SATAPATHY

ORDER

26.10.2022

Order No.

- 04.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. This is an application U/S. 439 of Cr.P.C. by the Petitioners for grant of bail in connection with Chauliaganj P.S. Case No.29 of 2016 corresponding to S.T. Case No.41 of 2017 pending in the Court of learned Sessions Judge, Cuttack for commission of offence punishable U/Ss. 364/302/201/34 of I.P.C. on the allegation of kidnapping and committing murder of one Om Prakash Swain by using fire arms and causing disappearance of evidence in the form of disposing the dead body of the deceased in pursuance to a conspiracy with co-accused persons.
 3. In the course of hearing of the bail application, Mr. Saroj Kumar Padhy, learned counsel for the petitioners submits that the F.I.R. was lodged against co-accused Bapi Sahu and others but absolutely there is no material on record to attract any criminal liability against the petitioners for commission of any offences and the petitioners were arrested on 29.01.2016 and are inside the jail custody since then. It is further submitted that although the petitioners have already suffered incarceration for a period more than six years but the trial is yet to be concluded and the status report furnished by the State reflects that 98 out of 100 witnesses have already been examined in this case but no evidence is forthcoming

against the petitioners for any offence and the petitioners, therefore, may kindly be released on bail. It is further submitted that since co-accused Nirmal Chandra Rout standing on similar footing has already been granted bail by the Apex Court in SLP(Criminal) No. 595 of 2022 and the petitioners, therefore, may kindly be released on bail by extending the principle of parity.

4. On contrary, learned counsel for the State in reply opposes the bail application of the petitioners vehemently by submitting inter alia that the petitioners being noted and dreaded gangsters cannot be equated with co-accused released on bail, especially when there appears allegations against the petitioners in the F.I.R. itself and they are not only involved in the murder of two persons in this case and another case but also are involved in several cases of serious and heinous offences and release of the petitioners on bail would definitely have an adverse impact on free and fair trial. It is also submitted that the materials on record reflects serious allegations against the petitioners for committing murder of the deceased and the petitioners are therefore, not entitled to be released on bail.

5. After having considered the rival submissions advanced for the parties upon reference to the allegations on record, there appears allegations against the petitioners for commission of the murder of the deceased by way of hatching conspiracy and the status report submitted by the State reflects that 98 out of 100 witnesses have already been examined leaving only the I.O. to be examined in this case. Although it is submitted on behalf of the petitioners that none of the witnesses have stated anything against the petitioners but not a single copy of deposition has been placed before this Court for perusal to evidence such fact. However, the status report as submitted by the State itself go to indicate that 22 number of criminal cases are pending against petitioner No.1, whereas 15 number of criminal cases are pending against petitioner No.2 and the aforesaid conduct of the petitioners not only evokes a bonafide and reasonable

apprehension of fear against the free and fair trial if they are allowed to go on bail but also places them not on similar footing with co-accused released on bail. In the event of release of petitioners on bail, there appears likelihood of them influencing the material witnesses in other cases also. A perusal of record would also go to indicate some allegations against the petitioners and the informant has also uttered the name of these petitioners in the F.I.R.

6. In view of the above facts and taking into consideration the allegations levelled against the petitioners as well as the number of criminal cases pending against them as also the fact that the trial of the case is likely to be concluded very shortly in view of the fact that 98 out of 100 witnesses have already been examined as submitted by the State and taking into account the nature and gravity of offences alleged against the petitioners and other surrounding circumstance of the commission of crime, this Court does not find any justification to grant bail to the petitioners. Hence, the prayer for bail of the petitioners stands rejected.

7. Accordingly, the BLAPL stands disposed of.

8. Urgent certified copy of the order be granted on proper application.

Kishore

(G. Satapathy)
Judge