

(2014) 11 OHC CK 0057
In the Orissa High Court
Case No : B.L.A.P.L. No. 20250 of 2014

Hrudananda Mallick

APPELLANT

Vs

State of Odisha

RESPONDENT

Date of Decision : 12-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 438 — Penal Code, 1860 (IPC) - Section 306, 34

Citation : (2015) 1 OLR 130

Hon'ble Judges : S.K. Sahoo, J.

Bench : Single Bench

Advocate : M. Mohapatra, G.R. Mohapatra and A. Dash, for the Appellant; Karunakar Nayak and Jyoti Prakash Patra, Addl. Standing Counsels, for the Respondent

Final Decision : Disposed off

Judgement

S.K. Sahoo, J.?This is an application filed by the petitioner under section 438 Cr.P.C. seeking pre-arrest bail in connection with Khandagiri P.S. Case No. 394 of 2014 corresponding to C.T. Case No. 3125 of 2014 pending in the court of learned S.D. J.M., Bhubaneswar for alleged commission of offence under sections 306/34 IPC.

2. On 9.8.2014 Dr. D.N. Satpathy, Casualty Medical Officer, Capital Hospital, Bhubaneswar sent a casualty memo through special messenger, to Khandagiri Police Station indicating therein that one Trinath Mohanty (hereinafter "the deceased") was brought by his wife Mamata Mohanty on 8.8.2014 at about 11.00 p.m. for consuming poison and he expired at casualty at about 2.30 a.m. on 9.8.2014. On the basis of such report, Khandagiri P.S. U.D. Case No. 60 of 2014 was registered. The Sub-Inspector of Khandagiri Police Station, Bhubaneswar conducted inquest over the dead body at Capital Hospital and sent the dead body for post-mortem examination. The post-mortem was conducted at the Capital Hospital and the cause of death was kept reserved awaiting viscera examination

report. The Sub-Inspector of Khandagiri Police Station, Bhubaneswar seized one suicidal note of the deceased from his pocket during inquest in presence of the witnesses.

3. On 12.8.2014 Mamata Mohanty who is the wife of the deceased lodged First Information Report before the Inspector-in-Charge, Khandagiri Police Station, Bhubaneswar alleging therein that the deceased was serving in L & T Company and he had given dealership of the L & T Company to accused Sandeep Samantaray @ Jitu. The company expressed dissatisfaction over the conduct of the deceased and ousted him from the service. Thereafter the deceased was serving under accused Sandeep Samantaray @ Jitu. The deceased worked there for about three months but thereafter the accused Sandeep Samantaray @ Jitu lodged a report at Khandagiri Police Station regarding misappropriation of his properties against the deceased. On 8.8.2014 at about 10.00 a.m., the deceased had been to Khandagiri Police Station and there accused Jitu and his associates put pressure on him for which he assured in writing to pay back Rs. 95,000/- within six months to accused Jitu but on the very day accused Jitu and his associates asked the deceased to pay back the entire amount within a month and not within six months. When the deceased did not agree, he was subjected to physical and mental torture. The deceased did not return back home on 8.8.2014 and expressed his suffering before his sister and brother-in-law. The sister and brother-in-law of the deceased tried to convince him but the deceased did not return back home. The informant contacted her relations to trace out the deceased and ultimately during midnight, he received the telephonic call from the deceased inviting her to a temple and getting such message, the informant and her nephew rushed to the spot and found the deceased was lying in a serious condition and they immediately shifted him to the Capital Hospital. On the way, the deceased stated that he was subjected to physical and mental torture by accused Jitu, Bulu, Ganesh Electrical and others for which he consumed poison. After reaching Capital Hospital, in spite of treatment, the deceased expired at about 2.30 a.m. The informant became sure that due to physical and mental torture by Jitu, Bulu and others, the deceased consumed poison and accordingly, lodged the F.I.R. on the basis of which, the case was registered against accused Jitu, Bulu, Ganesh (Electrical) and others.

4. The learned counsel for the petitioner Mr. Dayananda Mohapatra submitted that the petitioner has been unnecessarily entangled in the case. Neither the petitioner has threatened nor assaulted the deceased at any point of time. He further submits that there was some dispute between the deceased and accused Sandeep Samantaray @ Jitu and though the deceased had taken Rs. 95,000/- from accused Sandeep Samantaray @ Jitu for supplying electrical items, neither he supplied the same nor paid back the money and in that connection on the report of accused Sandeep Samantaray at Khandagiri Police Station,, a Station Diary Entry No. 196 was made on 7.8.2014 and on the next day, i.e., on 8.8.2014 there was mutual agreement between accused Sandeep Samantaray and the deceased for which another Station Diary Entry No. 206 dated 8.8.2014

was made at Khandagiri Police Station. He further submits that the deceased was having financial difficulty after he was ousted from his service in L & T Company and he was under severe mental depression for which he committed suicide and after his death the family members of the deceased have foisted the case. He further submits that since the deceased had not borrowed any money from the petitioner, the question of torture in the hands of the petitioner does not arise.

Learned counsel for the State on the other hand submitted that the conduct of accused Jitu and his friends in physically and mentally torturing the deceased has the reasonable nexus with the commission of suicide by the deceased. He further pointed out that not only in the F.I.R. but also in the statement of the informant recorded under section 161 Cr.P.C., it is categorically stated that the deceased made an oral dying declaration before the informant that on account of torture given by accused Jitu, Bulu, Ganesh and others, he consumed poison.

5. Considering the submissions made by learned counsel for the respective parties, though the final opinion regarding the cause of death is reserved but from the statements of witnesses and the casualty memo, it prima facie transpires that the deceased consumed poison and he died while undergoing treatment at Capital Hospital, Bhubaneswar. The suicidal note seized from the pocket of the deceased at the time of his inquest specifically indicates that it is on account of accused Jitu and one Santosh Shukla, he committed suicide. The suicidal note itself has given prima facie indication as to how the deceased was upset with the two accused persons for the harassment caused by them to him. Even though there is no direct evidence but in view of the suicidal note, it can be prima facie said that the two accused persons, namely, Jitu and Santosh Shukla abetted the commission of suicide of the deceased. The oral dying declaration made before the informant as indicated in the F.I.R. as well as in the 161 statement of the informant does not implicate the petitioner. The suicidal note also does not implicate the petitioner in any manner. There is also no previous dispute between the petitioner and the deceased.

6. Considering the materials available on record, I am inclined to release the petitioner on anticipatory bail.

Accordingly, this Court directs that in the event of arrest of the petitioner in connection with the aforesaid case, he shall be released on bail on furnishing bail bond of Rs. 10,000/- (rupees ten thousand) with one surety for the like amount to the satisfaction of the arresting officer with further conditions that he shall make himself available for interrogation by the I.O. as and when required and he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing any facts to the Courts or to the investigating Officer.

Violation of any of the aforesaid conditions shall entail cancellation of bail.

The BLAPL is accordingly disposed of.