

(2023) 11 OHC CK 0050
In the Orissa High Court
Case No : Bail Application No. 6523 Of 2023

Kani @ Kanhei Majhi

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 07-11-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 302

Citation : (2023) 11 OHC CK 0050

Hon'ble Judges : Dr.S.K. Panigrahi, J

Bench : Single Bench

Advocate : U.K. Barik, G.R. Mohapatra

Final Decision : Disposed Of

Judgement

Dr. S.K. Panigrahi, J

FIR

No.

Dated

Police Station

Case No. and Court's name

Sections

49

21.04.2019

Dabugaon

C.T. Case No.26 of 2019 pending in the court of learned Addl.District and Sessions Judge, Umerkote

Section 302 IPC

1. This matter is taken up through hybrid arrangement.
2. Heard learned counsel for the parties.
3. The Petitioner being in custody in connection with Dabugaon P.S. Case No.49 of 2019 corresponding to C.T. Case No.26 of 2019, pending before the court of the learned Addl. District and Sessions Judge, Umerkote, registered for the alleged commission of offence under Section 302 of the Indian Penal Code, has filed this application under Section 439 of Cr.P.C. for his release on bail.
4. The prosecution story, in brief, is that one Khagu Majhi-informant lodged an FIR at Dabugaon Police Station on 21.04.2019. It was alleged that on 19.04.2019 at 11 AM the informant had been to bath and when he returned to home, he came to know from his wife and children that Kanhei @ Kani Majhi of his village came in front of the house of his brother Tularam Majhi caused hurt by means of a lathi, resulting which his brother fell down and lost his sense and the accused fled from the spot. He went to the house of his brother and saw that his brother was in critical stage. Thereafter, they shifted him to CHC Dabugaon by Hospital vehicle and the doctor referred his brother to DHH, Nabarangapur for better treatment. On 20.04.2019 at 2.00 PM his brother died while undergoing treatment at DHH, Nabarangpur.
5. Learned counsel for the Petitioner submits that in the cross-examination of P.Ws.1 and 2 who are stated to be the eye witnesses of the occurrence have turned hostile. He further submits that the wife of the deceased P.W.17 has also stated that she knows nothing about the killing of her husband. He further submits that the Petitioner is in custody since 21.04.2019.
6. Learned counsel for the State vehemently opposed the bail prayer of the petitioner.
7. Considering the evidence of three important witnesses who have been cross-examined and the fact of completion of examination of 17 witnesses out of 27 prosecution witnesses and the fact that the petitioner has already spent more than four years in custody, this Court is of the view that he deserves to be released on bail. Accordingly, it is directed that the petitioner be released on bail in the aforesaid case with some stringent terms and conditions as deemed just and proper by the learned court in seisin over the matter with further conditions that:-
 - i. the petitioner shall appear before the local police station once in a fortnight in between 10 A.M. to 1.00 PM;
 - ii. he shall not indulge himself in any criminal offence while on bail; and
 - iii he shall not tamper with the evidence of the prosecution witnesses in any manner.

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

9. The BLAPL is, accordingly, disposed of.

10. Issue urgent certified copy of this order as per Rules.

.....