
(2024) 02 OHC CK 0022
In the Orissa High Court
Case No : Bail Application No. 01 Of 2024
Mohammad Safique Vs State Of Odisha ?

Date of Decision : 06-02-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 34, 294, 307, 323, 324, 326, 341, 506

Citation : (2024) 02 OHC CK 0022

Hon'ble Judges : Savitri Ratho, J

Bench : Single Bench

Advocate : Koustav Mohanty, S. Mishra

Final Decision : Allowed

Judgement

Savitri Ratho, J

1. This application under Section 439 of Cr.P.C. has been filed in connection with Jharsuguda P.S. Case No. 590 of 2023 corresponding to C.T. Case No. 2277 of 2023 pending in the court of the learned S.D.J.M., Jharsuguda where preliminary chargesheet has been filed against the petitioners under Sections 341, 294, 323, 324, 326, 307, 506 and 34 of the IPC keeping investigation open against four other accused persons.

2. The prayer for bail of the petitioners has been rejected vide order dated 26.12.2023 passed by the learned Sessions Judge, Jharsuguda in BLAPL No. 617 of 2023 when the investigation was in progress.

3. The prosecution allegation in brief is that on 24.11.2023 at about 1.00 P.M., while Nimaul Haque, employee of Abdul Kayum, who is a scrap dealer was quarrelling with petitioner no.2-Md. Afsar and others regarding a mobile phone when the informant intervened, Md. Afsar abused him in obscene language and threatened him with dire consequences. 15 minutes later, Md. Afsar came to the spot in an auto rickshaw along with Md. Safik, Md. Azad, Md. Arbaz, Md. Altab, Md. Chotu, Rabi and others and assaulted the informant and Nimaul Haque by means of a sword. The informant received injuries on his right palm, abdomen

and head and Nimaul Haque sustained injuries on his head. The injury on the head of Nimaul Haque which is a lacerated injury has been opined to be grievous in nature and was required to be stitched.

4. Mr. Koustav Mohanty, learned counsel for the petitioners submits that the petitioners are in custody since 25.11.2023 and in the meanwhile investigation is over and chargesheet has been filed and that the incident arose out of a trivial dispute. It is alleged that the petitioner no.2- Md. Afsar had pawned his mobile phone in the shop of the informant and when he took it back but did not pay Rs.1500/- which he assured to pay later, there was a quarrel and altercation between both sides and mutual assault and case and counter case were registered. He further submits that while the informant- Abdul Kayum has sustained simple injuries, Nimaul Haque who allegedly sustained grievous injury on his head has been discharged from the Hospital after treatment on the same day. He further submits that the petitioners do not have any criminal antecedents and petitioner no.2 has also sustained two injuries.

5. Ms. S. Mishra, learned Additional Standing Counsel opposes the prayer for bail stating that due to a trivial reason, the petitioners along with the co-accused have come to the shop of the informant and assaulted him in a pre-planned manner with swords resulting in number of injuries out of which one injury is grievous in nature, so the petitioners should not be released on bail. She also submits that chargesheet has been filed keeping investigation open as other accused persons have not been arrested.

6. Considering the submission of the counsel, the genesis of the occurrence, the submission that the petitioners do not have any criminal antecedents and Nimaul Haque who allegedly sustained grievous injury on his head has not been admitted in the Hospital but was discharged the same day after treatment, I am inclined to allow the prayer for bail of the petitioners.

7. The petitioners-Mohammad Safique, Md. Afsar and Mohammad Azad shall be released on bail on such terms and conditions as may be fixed by the learned Court below in seisin over the matter after verifying that the petitioners do not have any criminal antecedents and the injured Nimaul Haque was discharged on the same day i.e. 24.11.2023 after treatment, including the following conditions:

- (i) They will not commit any offence while on bail.
- (ii) They will not threaten or try to influence prosecution witnesses or tamper with evidence.
- (iii) They will not indulge any criminal activities.
- (iv) They will co-operate with the further investigation and will report before the I.O./IIC, Jharsuguda Police Station once in a week preferably on a Sunday between 3.00 p.m. to 5.00 p.m. till conclusion of trial.

8. Violation of any condition will entail in cancellation of bail/recall of this order.

9. The BLAPL is accordingly allowed.

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

11. A copy of this order be supplied to Ms. S. Mishra, learned Additional Standing Counsel for onward transmission to the IIC, Jharsuguda Police Station.

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