

(2022) 12 OHC CK 0030
In the Orissa High Court
Case No : Bail Application No. 5630 Of 2022

Tuna @ Sanatan Munda

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 02-12-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 164, 311, 439
Indian Penal Code, 1860 — Section 34, 120B, 201, 302, 307, 323, 341
Evidence Act, 1872 — Section 27

Citation : (2022) 12 OHC CK 0030

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

Bench : Single Bench

Advocate : A.K. Sahoo, Susamarani Sahoo

Final Decision : Disposed Of

Judgement

S.K. Sahoo, J

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

Heard learned counsel for the petitioners and learned counsel for the State.

This is an application under section 439 of Cr.P.C. in connection with S.T. Case No.08-01 of 2020 arising out of Deogarh P.S. Case No.174 of 2019 pending in the Court of learned Additional Sessions Judge, Deogarh for offences punishable under sections 341/323/307/302/ 201/120-B/34 of the Indian Penal Code.

The petitioners moved an application for bail before the Court of learned Additional Sessions Judge (I/c), Deogarh, which was rejected on 21.04.2022.

Learned counsel for the petitioners submitted that the petitioners are in judicial custody since 12.10.2019 and earlier the petitioners approached this Court for bail in BLAPL No.7503 of 2020 which was rejected as per order dated 31.03.2021, however, liberty was granted to the petitioners to renew their prayer

for bail after examination of the material witnesses in the trial Court.

Learned counsel for the petitioners submitted that out of thirty three charge sheet witnesses, nine witnesses have been examined in the trial Court and except P.W.9 Krushna Sabar, the informant in the case, who claims to be an eye witness to the occurrence, no other witness has stated anything against the petitioners. Learned counsel for the petitioners has annexed the deposition copies of the witnesses. He further submitted that though P.W.9 has stated in his evidence that he had seen both the petitioners to have dealt blow by means of an axe (tangia) to the deceased Purna Sabar for which he fell down on the ground but neither in his statement recorded under section 161 Cr.P.C. nor under section 164 Cr.P.C. he has stated about the same. Learned counsel however fairly submitted that such previous statements have not been confronted to the witness (P.W.9) due to inadvertence and steps are to be taken soon to file an application under section 311 Cr.P.C. for recall to P.W.9 to confront the previous statements and to prove the contradictions. Learned counsel further submitted that in view of the period of detention of the petitioners in judicial custody and absence of any criminal antecedents against the petitioners and the progress of the trial, the bail application of the petitioners may be favourably reconsidered.

Learned counsel for the State while not disputing that there are no eye witnesses to the occurrence and the case is based on circumstantial evidence submitted that at the instance of petitioner no.1 Tuna @ Sanatan Munda, the weapon of offence i.e. axe was recovered basing on his statement recorded under section 27 of the Evidence Act. She further submitted that blood stained wearing apparels of both the petitioners were also seized by the Investigating Officer during course of investigation. She further submitted that the petitioners are having no criminal antecedent.

Considering the submissions made by the learned counsel for the respective parties, the nature of evidence adduced during the trial so far, the period of detention of the petitioners in judicial custody and absence of any criminal antecedent and in view of the change in the circumstances after the rejection of the earlier bail application, I am inclined to reconsider the prayer for bail and direct the petitioners to be released on bail.

Let the petitioners be released on bail in the aforesaid case on furnishing bail bond of Rs.20,000.00 (rupees twenty thousand) each with two solvent sureties each for the like amount to the satisfaction of the Court in seisin over the matter with further terms and conditions as the learned Court may deem just and proper subject to condition that the petitioners shall appear before the learned trial Court on each date when the case would be posted for trial.

Violation of any terms and conditions shall entail cancellation of bail.

The BLAPL is accordingly disposed of.

Issue urgent certified copy as per Rules...

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