



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.355 of 2015

- 1. Biswanath Behera @
Velar**
- 2. Keshab Behera @
Mantu**
- 3. Debaraj Behera @
Litu**
- 4. Sk. Rahul @ Rahul @
Sk. Saheed**
- 5. Subhranshu Kumar
Das @ Tani**

***Appellants/
Petitioners***

*Mr. Sk. Zafarulla,
Advocate for appellant
no.1*

*Mr. Karunakar Nayak,
Advocate for appellants
nos.2 and 3*

*Mr. Devashis Panda,
Advocate for appellant
no.4*

-versus-

State of Odisha

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***Respondent/
Opp. Party***

*Mr. Priyabrata Tripathy,
Addl. Standing Counsel*

*Mr. Soura Ch. Mohapatra,
Senior Advocate for the
informant*

CORAM:

THE HON'BLE MR. JUSTICE S.K. SAHOO

THE HON'BLE MR. JUSTICE CHITTARANJAN DASH



ORDER
31.07.2024

Order No.

Misc. Case No.909 of 2015

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

This is an application for stay of realization of fine imposed by the learned trial Court.

Heard learned counsel for the appellants-petitioners, learned counsel for the informant and learned counsel for the State.

Considering the submissions made by the learned counsel for the respective parties, it is ordered that there shall be stay of realization of fine amount imposed on the appellants-petitioners pursuant to the judgment and order dated 20.05.2015 passed by the learned 2nd Additional Sessions Judge, Cuttack in S.T. Case No.29 of 2014 till disposal of the criminal appeal.

The Misc. Case is disposed of.

(S.K. Sahoo)
Judge

(Chittaranjan Dash)
Judge

I.A. No.2462 of 2023

63. This is an application for interim bail of appellant no.4 Sk. Rahul @ Rahul @ Sk. Saheed.



Mr. Devashis Panda, learned counsel for appellant no.4 submitted that appellant no.4 has filed a fresh bail application i.e. I.A. No.1488 of 2024.

In view of such submission, this I.A. is disposed of.

(S.K. Sahoo)
Judge

(Chittaranjan Dash)
Judge

I.A. No.2284 of 2023

&

I.A. No.1488 of 2024

64. The I.A. No.2284 of 2023 for bail of appellants nos.1, 2 and 3, namely, Biswanath Behera @ Velar, Keshab Behera @ Mantu and Debaraj Behera @ Litu respectively and I.A. No.1488 of 2024 for bail of appellant no.4 Sk. Rahul @ Rahul @ Sk. Saheed.

Heard Mr. Sk. Zafarulla, learned counsel appearing for the appellant no.1, Mr. Karunakar Nayak, learned counsel appearing for the appellants nos.2 and 3, Mr. Devashis Panda, learned counsel appearing for the appellant no.4 and Mr. Soura Chandra Mohapatra, learned Senior Advocate appearing for the informant and Mr. Priyabrata Tripathy, learned Additional Standing Counsel appearing for the State of Odisha.

The appellants-petitioners have been convicted under section 302/34 of the Indian Penal Code and



sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- (rupees ten thousand) each, in default of payment of fine, to further undergo R.I. for a period of one year each by the learned 2nd Additional Sessions Judge, Cuttack in S.T. Case No.29 of 2014.

Perused the impugned judgment.

Learned counsel for the petitioners submitted that the petitioners-appellants nos.1, 2 and 3 are in judicial custody for more than eleven years and petitioner-appellant no.4 is in judicial custody since ten years and nine months and even though paper book has been prepared since long and the matter was taken up for hearing in the year 2016 for some days but thereafter hearing could not be taken up. It is further argued that in view of the period of detention of the petitioners in judicial custody, the bail application of the petitioners may be favourably considered.

Learned counsel for the State, on the other hand, opposed the prayer for bail and placed the statements of the eye witnesses i.e. P.W.9 Smt. Hemalata Sahu, P.W.13 Chitta Ranjan Sahu and P.W.19 Prakash Kumar Singh and the eye witnesses have stated as to how the petitioners followed the deceased Keshab Behera in three motorcycles while he was going on a scooter from Chandi Mandir side towards Debigbara and fired gunshots near Debigbara. He further placed the evidence of the doctor (P.W.18), who conducted post mortem examination over the dead body of the deceased and noticed number of



punctured wounds on different parts of the body and opined that the cause of death was on account of haemorrhage and shock as a result of fire arms and wounds and the external injuries nos.(vi), (vii) and (x) along with the corresponding internal injuries were individually fatal in ordinary course of nature. Learned counsel for the State has produced the custody certificates of four petitioners and also the criminal antecedent reports, which indicate that the petitioner-appellant no.1 has got two criminal antecedents, petitioner-appellant no.2 has got four criminal antecedents and petitioner-appellant no.4 has got seven criminal antecedents, however petitioner-appellant no.3 has got no criminal antecedent.

Learned counsel for the petitioners has filed comprehensive affidavits relating to the status of those cases. It is submitted by the learned counsel for the petitioners that one accused, who was absconding, is now facing trial in the Court of learned 1st Additional Sessions Judge, Cuttack in S.T. Case No.293 of 2014 and he has been directed to be released on interim bail by this Court in BLAPL No.5883 of 2022 as per order dated 13.02.2023 mainly on the ground of his long period of detention in the custody since 12.09.2014 and since only five witnesses were examined in course of trial. The copy of the order has been filed, which is taken on record.

As per the order dated 15.05.2024, we asked the learned counsel for the State to obtain instruction if there



is any chance of law and order situation, in case the petitioners are released on bail.

Today, learned counsel for the State has produced the written instruction dated 30.07.2024 received from the Inspector in-charge of Lalbag police station, Cuttack UPD wherein it is mentioned that the deceased Keshab Behera was the Secretary of Seikh Bazar Puja Committee and the Vice President of Maha Nagar Shanti Committee, Cuttack at the time of his murder and the petitioners were the supporters of noted gang star Tito and they earned their livelihood by extortion and antisocial activities and they were local Goonda and out of fear, the innocent local people did not dare to raise any voice against their criminal activities. It is further mentioned that festival like Ganesh Puja, Durga Puja, Kartikeswar Puja and Bali Jatra would be celebrated ahead in Cuttack and if the petitioners are released on bail, they may involve themselves in demanding booty and commit antisocial activities to prove their existence for which there is every possibility of law and order situation in future. It is further mentioned that if the petitioners are released on bail, the family members of the deceased would not accept their presence in their locality as they belonged to the same sahi or adjacent sahi, which may lead to law and order situation, bloodshed and loss of life in future. The written instruction received by the learned counsel for the State is taken on record.

Mr. Mohapatra, learned Senior Advocate appearing



for the informant also opposed the prayer for bail and submitted that in view of the report furnished by the Inspector in-charge of Lalbag police station so also the criminal antecedents against the petitioners, they should not be released on bail.

After going through the nature of evidence adduced by the prosecution during trial, the manner in which the crime has been committed, the impact of such crime in the society, the criminal antecedents against the petitioners-appellants nos.1, 2 and 4 and the report submitted by the Inspector in-charge, we are not inclined to release the petitioners-appellants nos.1, 2 and 4, namely, Biswanath Behera @ Velar, Keshab Behera @ Mantu and Sk. Rahul @ Rahul @ Sk. Saheed respectively on bail. Accordingly, the prayer for bail stands rejected.

So far as petitioner-appellant no.3 Debaraj Behera @ Litu is concerned, in view of the available materials on record, while not inclining to release the petitioner-appellant no.3 on bail on merit, but since he is not having any criminal antecedent and he has remained in custody for more than eleven years, we are inclined to release the petitioner-appellant no.3 on interim bail for a period of one month from the date of release and the petitioner-appellant no.3 shall surrender before the learned trial Court immediately on expiry of the one month period.

For the above period, let the petitioner-appellant no.3 Debaraj Behera @ Litu be released on interim bail in



the aforesaid case on furnishing bail bond of Rs.50,000/- (rupees fifty thousand) with two local solvent sureties each for the like amount to the satisfaction of the learned trial Court. While on interim bail, the petitioner-appellant no.3 shall appear before the Inspector in-charge of Lalbag police station once in a week on every Sunday in between 10.00 a.m. to 4.00 p.m. and he shall not indulge in any criminal activities in any manner and he shall not try to come in contact with the family members of the deceased or any of the prosecution witnesses, who have deposed in the trial and he shall not leave the jurisdiction of the learned trial Court without seeking prior permission from the learned trial Court.

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

The Inspector in-charge of Lalbag police station shall keep close watch over the activities of the petitioner-appellant no.3 Debaraj Behera @ Litu while on interim bail and submit a report to this Court through the learned counsel for the State.

Both the I.As. are disposed of accordingly.

(S.K. Sahoo)
Judge

(Chittaranjan Dash)
Judge



CRLA No.355 of 2015

65. List this matter in the week commencing from 09.09.2024. Learned counsel for the appellant no.3 shall produce the surrender certificate of the appellant no.3 Debaraj Behera @ Litu on the next date.

A free copy of this order be handed over to the learned counsel for the State.

Urgent certified copy of this order be granted as per rules.

(S.K. Sahoo)
Judge

(Chittaranjan Dash)
Judge

RKM