



No.1366 of 2023, appellant Babulu @ Nihar Ranjan Das @ Patnaik in CRLA No.758 of 2023 has filed I.A. No.2097 of 2023 and the appellant Madhia @ Madhab Das in CRLA No.1141 of 2025 has filed I.A. No.2508 of 2023 for bail.

Prosecution Case:

2. The prosecution case, in short, is that Binod Bihari Das (hereafter 'the deceased') was the younger brother of Ras Bihari Das, the informant of the case. The informant was having a liquor shop at Brahmanajharilo, Cuttack and he had business rivalry with the appellant Tulia @ Nigamananda Jena. On 16.12.2015 at about 04.30 p.m., the informant Ras Bihari Das received a telephonic call from his supervisor, namely, Rohit, who informed him that while the deceased was supervising the construction work of their shop room situated at Brahmanajharilo by standing in front of the said half-constructed shop room, two persons came in a motorcycle, purchased liquor from the adjacent liquor shop and suddenly came near the deceased and shot fire at him. They were also uttering in loud voice, "TO BADA BHAIR BABU AMA TULIA BHAIR SAHITA BEPARA RE TAKKAR DEUCHI, TAKU BI MARIBU, AJI TOTE BI MARIBU" (Your elder brother Babu is competing with our Tulia Bhai in business; We will kill him; Today we will also kill you). It is the further



prosecution case that due to business rivalry, the appellant Tulia @ Nigamananda Jena and his wife Jinmayee Jena were threatening the informant to kill him and his family members. Being enraged, they took revenge and killed the deceased by hiring professional criminals.

The informant Ras Bihari Das lodged a written report before the Inspector in-charge of Sadar Police Station, Cuttack, on the basis of which Cuttack Sadar P.S. Case No.359 dated 06.12.2015 was registered under sections 302/452/380/120-B/34 of the Indian Penal Code read with sections 25/27 of the Arms Act and investigation was taken up and on completion of investigation, charge sheet was submitted against the appellants for the offences under sections 302/452/380/120-B/34 of the Indian Penal Code read with sections 25 (1-AA)/27 of the Arms Act.

The case was committed to the Court of Session after completing due formalities. The appellant Tulia @ Nigamananda Jena faced trial in the Court of learned 3rd Addl. Sessions Judge, Cuttack in S.T. Case No.134 of 2018 and he was found guilty for the offences under sections 302/120-B/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life



and to pay a fine of Rs.20,000/-, in default, to undergo R.I. for a further period of one year for the said offences.

The appellants, Suman Kumar Das, Babulu @ Nihar Ranjan Das @ Patnaik and Madhia @ Madhab Das faced trial in the Court of learned 3rd Addl. Sessions Judge, Cuttack in S.T. Case No.79 of 2017 and they were found guilty under sections 302/452/392/120-B/34 of IPC and sections 25(1-B)/27 of Arms Act and sentenced to undergo R.I. for life and to pay a fine of Rs.20,000/- each, in default, to undergo R.I. for a further period of one year for the offence under section 302/34 of I.P.C., to undergo R.I. for life and to pay a fine of Rs.20,000/- each, in default, to undergo R.I. for a further period of one year for the offence under section 302/120-B/34 of I.P.C., to undergo R.I. for seven years and to pay a fine of Rs.10,000/- each, in default, to undergo R.I. for a further period of six months for the offence under section 452/34 of I.P.C., to undergo R.I. for ten years and to a pay fine of Rs.10,000/- each, in default, to undergo R.I. for six months for the offence under section 392/34 of I.P.C., to undergo R.I. for two years and to pay a fine of Rs.5,000/-, in default, to undergo R.I. for three months for the offence under section 25(1-B) of Arms Act and to undergo R.I. for five years and to pay a fine of Rs.5,000/-, in default, to undergo R.I. for a



period of four months for the offence under section 27 of the Arms Act and all the sentences were directed to run concurrently.

3. Challenging the judgment and order of conviction and sentence, the appellant Tulia @ Nigamananda Jena preferred CRLA No.423 of 2023, which was admitted on 19.05.2023 and an order was passed staying realisation of fine pending disposal of the appeal. The appellant filed I.A. No.926 of 2023 under section 389 Cr.P.C. for suspension of execution of sentence imposed upon him and a coordinate Bench of this Court by order dated 09.10.2023, directed release of the appellant on bail.

Challenging the judgment and order of conviction and sentence, the appellant Suman Kumar Das preferred CRLA No.629 of 2023, which was admitted on 22.06.2023 and an order was passed staying realisation of fine pending disposal of the appeal. The appellant Suman Kumar Das filed I.A. No.1366 of 2023 under section 389 Cr.P.C. for suspension of execution of sentence imposed upon him and a coordinate Bench of this Court by order dated 09.10.2023, directed release of the appellant on bail.



Challenging the judgment and order of conviction and sentence, the appellant Babulu @ Nihar Ranjan Das @ Patnaik preferred CRLA No.758 of 2023, which was admitted on 30.08.2023 and an order was passed staying realisation of fine pending disposal of the appeal. The appellant Babulu @ Nihar Ranjan Das @ Patnaik filed I.A. No.2097 of 2023 under section 389 Cr.P.C. for suspension of execution of sentence imposed upon him and a coordinate Bench of this Court by order dated 09.10.2023, directed release of the appellant on bail.

Challenging the judgment and order of conviction and sentence, the appellant Madhia @ Madhab Das preferred CRLA No.1141 of 2023, which was admitted on 31.10.2023 and an order was passed staying realisation of fine pending disposal of the appeal. The appellant Madhia @ Madhab Das filed I.A. No.714 of 2025 for interim bail on the ground of death of his mother and this Court by order dated 05.03.2025 directed release of the appellant on interim bail for a period of two weeks and the appellant surrendered before the learned trial Court and remanded to judicial custody on 20.03.2025. He has filed I.A. No.2508 of 2023 for bail.

4. Challenging the orders of this Court dated 09.10.2023 in directing release of the three appellants Tulia @



Nigamananda Jena, Suman Kumar Das and Babulu @ Nihar Ranjan Das @ Patnaik, the informant Ras Bihari Das preferred Special Leave to Appeal (Criminal) Nos.457 of 2024, 458 of 2024 and 459 of 2024 before the Hon'ble Supreme Court and the Hon'ble Court vide a common order dated 07.05.2024 set aside the bail orders dated 09.10.2023 and remanded the interlocutory applications for bail filed by the said appellants to this Court for fresh disposal. However, the Hon'ble Supreme Court enlarged the three appellants on bail on the strength of the bail already granted by this Court till 15.05.2024, on which date this Court was requested to pass appropriate orders in the matter of its continuance or otherwise pending disposal of the interlocutory applications for suspension of sentence.

5. Pursuant to the aforesaid order of the Hon'ble Supreme Court dated 07.05.2024, a coordinate Bench of this Court took up the interim applications for bail on 15.05.2024 and granted time to the learned counsel for the State so also learned counsel for the informant to file written objections and extended the bail granted to the three appellants till the next date, which was fixed to 28.06.2024. The matter was then taken up on 26.07.2024 and though the learned counsel for the informant filed objection, but the learned counsel for the State took time to



file written objection and prayer was allowed and the case was posted to 09.08.2024, however no order was passed in extending the bail granted to the three appellants. The matter was then taken up on 16.08.2024, on which date the learned counsel for the State filed objection and the matters were adjourned to 1st week of September 2024. On 06.09.2024, the coordinate Bench heard the matters, concluded the hearing and reserved the order. However, again the matters were listed on 08.10.2024 and the following order was passed:

"1. This matter is taken up through hybrid mode.

2. While perusing the materials placed for addressing the rival submissions in passing the order; this Court feels it apposite to take into account the conduct of the Appellant during all these periods when he has been enjoying the liberty in view of the order passed by us, which is continuing to be in force and now required to be passed afresh giving a relook keeping in view the order of the Hon'ble Apex Court as also his conduct while inside the jail.

In that view of the matter, learned Additional Government Advocate is directed to obtain a report from the proper quarter to the above effect, by the next date of listing.



3. List this matter in the 3rd week of November, 2024.”

Then the matters were listed before the coordinate Bench of this Court on 11.02.2025, 18.03.2025, 22.04.2025 and got adjourned on the prayer of the parties.

This Bench took up the matter for the first time on 01.12.2025. After perusing the order dated 07.05.2024 passed by the Hon’ble Supreme Court in setting aside the bail orders and remanding the bail applications to this Court for fresh disposal, since we find that even though the matters were taken up on 26.07.2024, 08.10.2024, 11.02.2025, 18.03.2025 and on 22.04.2025, but the bail orders granted on 15.05.2024 till 28th June 2024 in the case of the three appellants were not extended further and the appellants had not surrendered despite non-extension of the bail orders, we directed the appellants to surrender by 06.12.2025 and produce the surrender certificates and further directed the matter to be listed on 10.12.2025 for hearing of the bail applications. It was further observed that if the three appellants failed to surrender by 06.12.2025, the Superintendent of Police/Commissionerate of Police, Bhubaneswar-Cuttack shall ensure that the appellants are arrested and produced before the learned trial Court and



thereafter, the learned trial Court shall remand them to judicial custody and report to this Court.

Challenging the aforesaid order dated 01.12.2025 passed in CRLA No.758 of 2023 and CRLA No.423 of 2023, the appellants, namely, Babulu @ Nihar Ranjan Das @ Patnaik and Tulia @ Nigamananda Jena moved the Hon'ble Supreme Court in S.L.P.(Criminal) Nos.19660 and 19666 of 2025 and the Hon'ble Supreme Court vide common order dated 05.12.2025 has been pleased to extend the interim bail granted to the appellants till the next date of hearing fixed by this Court.

However, since we found that appellant Suman Kumar Das has not approached the Hon'ble Supreme Court against an order dated 01.12.2025 and there was a direction to him also to surrender before the learned trial Court by 06.12.2025 and in case, he failed to surrender by that date, the Superintendent of Police/Commissionerate of Police, Bhubaneswar-Cuttack shall ensure his arrest and produce him before the learned trial Court who shall remand him to judicial custody and report to this Court, we called for a report from the learned trial Court as to why without verifying as to whether the appellant Suman Kumar Das had approached the Hon'ble Supreme Court or not, blindly accepted the copy of the order



which was in favour of appellants Tulia @ Nigmananda Jena and Babulu @ Nihar Ranjan Das @ Pattnaik and extended the interim order granted to the appellant till the next date of hearing before this Court. The DCP filed an affidavit that the appellant Suman Kumar Das has surrendered before the learned trial Court on 10.12.2025 and produced the order sheet of the learned trial Court in accepting the surrender of the appellant and committing him to jail custody.

6. Pursuant to the order dated 07.05.2024 passed by the Hon'ble Supreme Court, learned counsel for the State has filed objection to the bail application filed by the appellants.

In the said objection, it has been stated that in order to bring home the charges, the prosecution has relied upon twenty two charge sheet witnesses, among them the evidences of P.Ws.1, 2, 3, 4, 5, 6, 7, 11, 12, 14 and 20 have been relied upon in order to find guilt of the appellants, out of which seven eye witnesses viz. P.Ws.1, 2, 5, 6, 7, 11 and 12 have been examined, who stated against the appellants for their involvement in the crime and their testimony has been clearly and cogently corroborated by the testimony of the Investigating Officer i.e., P.W.21. It is further stated that the weapon of offence i.e., M.O.II & III have been seized at the instance of the



appellants, namely, Suman Kumar Das and Babulu @ Nihar Ranjan Das @ Pattnaik and P.W. 14 deposed as a witness to the recovery of weapons under section 27 of Evidence Act and he has also supported the prosecution case against all the appellants. It is also stated that prior to the occurrence, an F.I.R. was also lodged by the informant (P.W.20) against the appellant Tulia @ Nigamananda Jena and another Chagala Mallick and a poster was pasted on the wall of the informant's house where it was written that the appellants would kill the informant and his family members if the informant would stand on the way of their brother/appellant Tulia @ Nigamananda Jena. It is also stated that P.W.19, who is the Scientific Officer, proved the biological sample and P.W.22 examined the cartridge and pistol who is the expert witness in the case and proved his report, confirmed that the cartridge fired, was from the said pistols, M.Os.II and III. It is also stated that P.W.6 and P.W.7 have categorically stated against the appellants, namely, Suman Kumar Das and Babulu @ Nihar Ranjan Das @ Pattnaik that they fired at the deceased from their guns and the post mortem report proves the corresponding gun-shot injuries inflicted on the deceased. The other accused persons are the instigators and the incident had taken place at the instance of the appellants Tulia @



Nigamananda Jena and Madhia @ Madhab Das with their common intention and out of the conspiracy of all the four appellants. It is also stated that the eye-witness P.W.11 has identified the appellants, Babulu @ Nihar Ranjan Das @ Pattnaik and Suman Kumar Das in the T.I. parade. It is also stated that P.W.2 who is one of the eye witnesses to the occurrence has specifically stated in his evidence that the aforesaid appellants came to his house and threatened his wife and children at the point of gun to the effect that if P.W.2 would say anything in the Court against them, they would kill all his family members. In the said objection, it is also mentioned about the criminal antecedents against all the appellants, which are as follows:

<u>Name of the Appellants</u>	<u>Details of the Criminal Cases</u>
Tulia @ Nigamananda Jena (Appellant in CRLA No.423/2023)	a) Jagatsinghpur P.S. Case No.106 dtd.21.04.1990 U/s.341/324/294/34 I.P.C.
	b) Jagatsinghpur P.S. Case No.187 dtd.19.06.1990 U/s.147/148/336/ 294/149 I.P.C.
	c) Jagatsinghpur P.S. Case No.548 dtd.24.12.1993 U/s.302/34 I.P.C.
	d) Jagatsinghpur P.S. Case No.41 dtd.21.04.1997 U/s.341/323/506/34 I.P.C.
	e) Jagatsinghpur P.S. Non-FIR No.16 dtd.14.02.1999 U/s.110 I.P.C.



- f) Cuttack Sadar P.S. Case No.252 dtd.21.10.1998 U/s.364/302/201/34 I.P.C.
- g) Tirtol P.S Case No.187 dtd. 21.07.1999 U/s.341/294/307/34 I.P.C. read with 25/27 Arms Act.
- h) Biridi P.S Case No.32 dtd.31.03.2015 U/s.294/ 506/507/387/120-B I.P.C.
- i) Biridi P.S Case No.39 dtd.14.04.2015 U/s.294/387/506/34 I.P.C.
- j) NSA Order No.571/Con. Dt. 05.08.1999 of District Collector, Jagatsinghur.
- k) Govindapur P.S. Case No.79 Dt. 26.11.2013 U/s. 294/452/386/307/ 506/34 I.P.C.
- l) Biridi P.S Case No.96 dtd.03.12.2015 U/s.387/506/294/34 I.P.C. & 25/27 of Arms Act
- m) Cuttack Sadar P.S. Case No.318 dtd.01.11.2013 U/s.294/506/34 I.P.C. & sec. 9(b) of I.E. Act.
- n) Cuttack Sadar P.S. Case No.359 dtd.06.12.2015 U/s.302/452/392/ 120-B/34 I.P.C. & sec.25(i-AA)/27 of Arms Act.
- o) Cuttack Sadar P.S. Case No.288 dtd.04.10.2015 U/s.294/386/34 I.P.C. & sec. 9(b) of I.E. Act.
- p) Cuttack Sadar P.S. Case No.359 dtd.06.12.2015 U/s.302/452/120-B/ 34 I.P.C. & sec. 25/27 of Arms Act.
- q) Oltapur P.S. Case No.98 dt. 14.12.2015 U/s.392 of I.P.C. & Sections 25/27 of Arms Act.
- r) Oltapur P.S. Case No. 99 dt.



15.12.2015 U/s. 307/387/34 of I.P.C.
& Sections 25/27 of Arms Act.

Suman Kumar Das
(Appellant in CRLA
No.629 of 2023)

- a) Madhupatna P.S. Case No.16 dt. 17.08.2007 U/s 379/34 I.P.C.
- b) Madhupatna P.S. Case No.26 dt. 22.02.2014 U/s 341/323/294/506/34 I.P.C. & 25/27 Arms Act.
- c) Madhupatna P.S Non-FIR Case No.12 dt.23.08.2013 U/s 110 Cr.P.C.
- d) Malgodown P.S. Case No.59 dt.16.07.2008 U/s 399/402 I.P.C. & 25/27 Arms Act.
- e) Malgodown P.S. Case No.101 dt.31.10.2009 U/s. 393/34 I.P.C.
- f) Raghunathpur P.S. Case No.14 dt.07.02.2014 U/s.341/379/ 302/34 IPC & 25/27 Arms Act.
- g) Cuttack Sadar P.S. Case No.288 dt.04.10.2015 U/s. 294/386/34 I.P.C.
- h) Cuttack Sadar P.S. Case No.359 dt.06.12.2015 U/s.302/452/120-B/34 IPC & 25/27 Arms Act.
- i) Oltapur PS Case No.98 dtd. 14.12.2015 U/s.392 I.P.C. & 25/27 Arms Act.
- j) Oltapur P.S. Case No.99 dtd. 15.12.2015 U/s.307/387/34 I.P.C. & 25/27 Arms Act.

Babulu @ Nihar
Ranjan Das @
Patnaik

(Appellant in CRLA
758/2023)

- a) Tirtol P.S. Case No. 64 dt. 16.03.2013 U/s 394/34 I.P.C. & Sec. 25/27 Arms Act.
- b) Tirtol P.S. Case No.65 Dt. 16.03.2013 U/s.341/387/307/34 I.P.C. & Sec. 25/27 Arms Act.



- c) Tirtol P.S. Case No.71 dt.25.03.2013
U/s.147/148/307/385/435/149 I.P.C.
and 25/27 Arms Act & Sec.3 of
Explosive Substance Act.
- d) Malgodown P.S. Case No.59 dt.
16.07.2008 U/s.399/402 I.P.C. &
Sec. 25/27 Arms Act.
- e) Khurda Town P.S. Case No.206 dt.
20.05.2013 U/s.394 I.P.C. & Sec.
25/27 Arms Act.
- f) Airfield P.S. Case No.68
dt.26.06.2012 U/s.307/34 I.P.C.
- g) Khandagiri P.S. Case No.120
dt.02.10.2011 U/s.448/444/294/506
I.P.C.
- h) Tamando P.S. Case No.33 dt.
29.03.2013 U/s.294/506/34 I.P.C. &
Sec. 25/27 Arms Act.
- i) Cuttack Sadar P.S. Case No.288
dt.04.10.2015 U/s.294/386/34 I.P.C.
- j) Cuttack Sadar P.S. Case No.359
dt.06.12.2015 U/s.302/452/120-B/34
I.P.C. & 25/27 Arms Act.
- k) Oltapur P.S. Case No.98
dt.14.12.2015 U/s.392 I.P.C. & 25/27
Arms Act.
- l) Oltapur P.S. Case No.99
dt.15.12.2015 U/s.307/387/34 I.P.C.
& 25/27 Arms Act.

Madhia @ Madhab
Das

(Appellant in CRLA
No.1141 of 2023)

- a) Oltapur P.S. Case No. 33
dt.01.06.2014 U/s.302/120-B/34
I.P.C.
- b) Oltapur P.S. Case No.35
dt.06.05.2015 U/s.506 I.P.C. & 3(a)
Explosive Substance Act.



- c) Oltaipur P.S. Case No.51 dt. 29.06.2015 U/s.386 I.P.C.
- d) Oltaipur P.S. Case No.59 dt. 28.07.2015 U/s.386/120-B I.P.C. & 3(a) Explosive Substance Act.
- e) Oltaipur P.S. Case No.74 dt.13.09.2015 U/s.294/506/386/307/34 I.P.C. & 3(a) Explosive Substance Act.
- f) Oltaipur P.S. Case No.93 dt.20.11.2015 U/s.307/387/324/34 IPC & 9(b) I.E. Act.
- g) Oltaipur P.S. Case No.98 dt.14.12.2015 U/s.392 I.P.C. & 25 Arms Act.
- h) Oltaipur P.S. Case No.99 dtd.15.12.2015 U/s.307/387/34 I.P.C. & 25/27 Arms Act.
- i) Govindapur P.S. Case No. 60 dt.11.09.2014 U/s.341/324/ 307/506/34 I.P.C. & 9(b) I.E. Act.
- j) Govindapur P.S. Case No.20 dt.13.03.2015 U/s. 302/201 I.P.C.
- k) Govindapur P.S. Case No.04 dt.19.01.2015 U/s. 399/402 I.P.C.
- l) Govindapur P.S. Case No.29 dt.06.05.2015 U/s.399/402 I.P.C.
- m) Govindapur P.S. Case No.39 dt.10.06.2015 U/s.399/402 I.P.C. & 3(a) Explosive Substance Act.
- n) Niali P.S. Case No.137 dt. 28.06.2015 U/s.294/506/353/307/120-B I.P.C. & 9(b) I.E. Act/Sec 3(a) Explosive Substance Act & 25/27 Arms Act.



- o) Cuttack Sadar P.S. Case No.288
dt.04.10.2015 U/s.294/386/34 I.P.C.
- p) Cuttack Sadar P.S. Case No.359
dt.06.12.2015 U/s.302/452/120-B/34
IPC & 25/27 Arms Act.
- q) Oltaipur P.S. Case No.98 dtd.
14.12.2015 U/s.392 I.P.C. & 25/27
Arms Act.
- r) Oltaipur P.S. Case No.99
dt.15.12.2015 U/s.307/387/34 IPC &
25/27 Arms Act.

It is also stated that the appellant Tulia @ Nigamananda Jena is the master mind behind the crime and for whom the entire incident had occurred, which has been especially proved by P.W.20 and all other eye witnesses. It is also stated that the informant's family are in a panic state and they are feeling danger to their lives if the appellants are enlarged on bail. It is also stated that the bail of the appellants should be rejected on the following grounds:

- (i) If the convicted accused persons/appellants are released on bail, they may take revenge on the informant and his family members;
- (ii) If the convicted accused persons/appellants are released on bail, they may create havoc under Sadar Police Station jurisdiction;



(iii) If the convicted accused persons/appellants are released on bail, they may commit similar types of offences under Sadar Police Station jurisdiction;

(iv) If the convicted accused persons/appellants are released on bail, they may collect dada bati from the shopkeepers by terrorizing in the locality;

(v) If the convicted accused persons/appellants are released on bail, the criminal activities will increase day by day in the locality.

The informant has also filed objection to the interim applications for suspension of sentence wherein he has stated that the appellants Tulia @ Nigamananda Jena, Suman Kumar Das and Madhaba Das came to the liquor shop of the deceased to purchase liquor and as per the statements of the occurrence witnesses, had cold bloodedly murdered the deceased by using gun. It is further stated that the appellants were identified in the T.I. parade and also in the trial and their conviction is based on direct evidence. It is further stated P.W.2 identified the appellant Tulia @ Nigamananda Jena in T.I. parade and stated four armed persons came to his house and threatened his wife and son by putting a revolver to their heads, stating that they would kill P.W.2's entire family if he dared to give evidence in the case. It is further stated that the appellant Tulia @ Nigamananda Jena is



a die-hard criminal and releasing him on bail would definitely endanger the lives of the witnesses. It is further stated that prior to 15-20 days of the incident, threats were received by the informant over phone and to that effect, F.I.R. was also lodged. It is further stated that after release of the appellant Tulia @ Nigamananda Jena on bail, the informant filed CRLMP No.2194 of 2023 and subsequently, he was granted protection by the Witness Protection Cell after appraising the threat perception to the informant. The informant has further stated that in view of the availability of large number of criminal antecedents against all the appellants and their conduct, they should not be enlarged on bail.

Appellant Tulia @ Nigamananda Jena has filed his reply to the objection filed by the State wherein it is stated that he had not been found guilty of the offences under sections 452/392/34 of I.P.C. read with sections 25(1-B)/27 of the Arms Act, rather he has been convicted under sections 302/120-B/34 of I.P.C. It is further stated that none of the eye witnesses examined during trial has stated about the presence of the appellant Tulia @ Nigamananda Jena at the spot on the date of incident and P.W.21, the I.O. in his evidence has admitted that appellant Tulia @ Nigamananda Jena was in jail custody at the



time of incident. It is further stated that no fire arm was recovered from the appellant for which he was acquitted of the charges under sections 25(1-B)/27 of the Arms Act. It is further stated that the appellant Tulia @ Nigamananda Jena is a licensed Super-class contractor under R & B Deptt., Government of Odisha and P.W.20, the informant has neither led any evidence that he or his deceased brother had ever having a contractor's license nor prosecution has led any evidence at the trial that appellant Tulia @ Nigamananda Jena had any liquor vending license or any illicit liquor business to establish the allegations of business rivalry between the informant or his deceased brother with him. With regard to the incident relating to the poster stuck on the wall of the informant's house at his village is concerned, it is stated that the prosecution has examined the then I.I.C., Biridi P.S. as P.W.15 wherein he has deposed that the appellant Tulia @ Nigamananda Jena is not involved in Biridi P.S. Case No.94 of 2015 registered for that incident in which he had arrested one Samir Pattnaik and Deepak @ Subhakanta Das and vide Ext.11, the I.O. P.W.21 had seized the documents relating to Biridi P.S. No.94 of 2015. It is further stated that neither M.O.II nor M.O. III has been established to have any connection with the appellant Tulia @ Nigamananda Jena in the trial. It is further



stated that during investigation, P.W.21 found no evidence of the other appellants having met the appellant Tulia @ Nigamananda Jena at any time before the incident or of their being together at any time. It is further stated that the appellant Tulia @ Nigamananda Jena was all along in custody and is no way connected with the allegations. It is further stated that the appellant Tulia @ Nigamananda Jena has not been convicted in any of the criminal cases registered against him as on date and his detentions under N.S.A. were quashed by this Court. It is further stated that pursuant to the bail order passed by this Court, the appellant Tulia @ Nigamananda Jena has been appearing before the Inspector in-charge of Sadar police station on each Monday of the week and no allegation of overt act has been reported against him during the said period.

7. Since common question of law and facts are involved in all these bail applications arising out the aforesaid four criminal appeals, they were heard together and disposed of by this common order.

8. Mr. Devashis Panda, learned counsel appearing for the appellant Tulia @ Nigamananda Jena emphatically contended that P.Ws.6 and 12 were examined on 09.12.2015 and the other appellants were arrested on 06.01.2016 and the appellant Tulia



@ Nigamananda Jena being in custody, remand report was filed and he was produced on 30.04.2016 and on completion of investigation, charge sheet was submitted against the appellants under sections 302/452/392/120-B/34 of I.P.C. and sections 25 and 27 of the Arms Act. He further submitted that submission of the learned counsel for the informant that the list of antecedents furnished in para 3 of the informant's objection contains both list of antecedents where the appellant Tulia @ Nigamananda Jena was apprehended as well as where he had not been apprehended, is not borne out from the objection itself and there has been no recovery from either the person or the possession of the appellant Tulia @ Nigamananda Jena of anything even remotely incriminating him in the incident. Learned counsel further submitted that the objections filed by both the State as well as the informant have been rebutted by filing replies thereto admitting the antecedents and stating that none of those cases have so far been culminated in conviction of the appellant Tulia @ Nigamananda Jena, which has not been controverted either by the State or by the informant. Learned counsel further submitted that none of the eye witnesses have stated to have seen the co-appellants along with appellant Tulia @ Nigamananda Jena together before the incident to establish prior meeting of minds.



He further submitted that admittedly, the appellant Tulia @ Nigamananda Jena was not present at the spot and he was in custody prior to the date of incident and the I.O. (P.W.22) admitted that no materials have been seized by him during investigation to show that the other appellants met the appellant Tulia @ Nigamananda Jena either in jail or in Court or on his remand dates before 06.12.2015. It is further submitted that P.W.6 Ganesh Ch. Mallick and P.W.12 Ajit Kumar Routray examined by the I.O. as eye witnesses to the incident on 09.12.2015 claimed to have seen both the appellants Nihar and Suman firing at the deceased and have not stated to have heard the assailants of deceased naming the appellant Tulia @ Nigamananda Jena. Learned counsel further submitted that P.W.1 Bharat Maharana, an eye witness to the occurrence stated to be the driver of the deceased has stated that one of the two persons went up to the deceased and fired at him, but has not stated that while firing, the assailant was taking the name of appellant Tulia @ Nigamananda Jena. He further submitted that P.W.2 Bijay Kukmar Ray @ Babuli, who is an eye witness to the occurrence and salesman of the liquor shop of the informant stated that on coming out of the shop, he saw the assailants after firing the deceased, were kicking him and taking the name



of the appellant Tulia @ Nigamananda Jena. He further submitted that P.W.3 Paresh Jena is not an eye witness and he stated to have heard the murder of the deceased by the appellant Tulia @ Nigamananda Jena through his associate. Learned counsel further submitted that P.W.5 Mir Babar Ali, an eye witness and labour contractor of market building stated that while he was talking with the deceased, one person came to him, queried about liquor price and fired at his belly and while firing, the assailant was taking the name of appellant Tulia @ Nigamananda Jena. He further submitted that P.W.7 Pratap Kumar Sahoo, an eye witness and salesman of liquor shop owned by the informant has not stated to have heard assailants of deceased naming the appellant. He further submitted that P.W.9 Rohit Kumar Das, who is not an eye witness, is the IMFL shop's supervisor and was informed by P.W.7 Pratap and informed P.W.20 and did not implicate the appellant Tulia @ Nigamananda Jena. He further submitted that P.W.11 Bapi Mallick, an eye witness and salesman of Liquor shop owned by the informant stated that he saw both firing at deceased and then took away his belongings and were taking the name of appellant Tulia. He further submitted that P.W.15 Ranjan Kumar Mallick, the I.I.C. of Biridi P.S., who is an witness to the seizure



of records in Biridi P.S. Case No.94 of 2015 and the poster seized in this case during trial by P.W.22, in his cross-examination has stated that the appellant Tulia @ Nigamananda Jena was not involved in Biridi P.S. Case No.94 of 2015. He further submitted that both P.Ws.6 and 12 did not immediately disclose of having seen the incident and were examined three days after the incident for which no reasonable explanation has been given. Learned counsel further submitted that the appellant Tulia @ Nigamananda Jena, who was unknown to all the eye witnesses, was neither put to T.I. parade nor they have stated about his presence at or near the spot. Learned counsel further submitted that with regard to the allegation of the prosecution regarding prior meeting of minds between the appellants, it is admitted by the I.O. that the appellant Tulia @ Nigamananda Jena was in jail custody prior to the incident, but he has not got any material during investigation to show that the appellant Tulia @ Nigamananda Jena was previously unknown to others or that they had all met together or conversed together at any time before the incident or had committed any criminal act together. Learned counsel further submitted that the statement of P.W.14 Pabitra Mahapatra is that while in custody, the appellant Nihar had disclosed in presence of I.O. and other policemen of having



been contacted by appellant Tulia @ Nigamananda Jena over phone and asked to do away with the deceased and had supplied him with guns for the purpose and his testimony, is at best an extra-judicial confession before him, who was neither known to the person making the statement and who is a co-accused. Learned counsel further submitted that as on the date of judgment, the appellant Tulia @ Nigamananda Jena had undergone almost seven years of custodial detention as UTP, whereafter, he had undergone almost six months of custodial detention as a convict and his conduct in jail and also while on bail, has been exemplary and that he had abided by all conditions of bail and therefore, it is a fit case where the appellant Tulia @ Nigamananda Jena should be enlarged on bail.

Mr. Soura Chandra Mohapatra, learned Senior Advocate appearing for the appellant Suman Kumar Das (in CRLA No.629 of 2023) filed his reply to the objections filed by the State and the informant and argued that the appellant Suman Kumar Das has got ten nos. of criminal antecedents, out of which in five cases, he has been acquitted and one case has been closed and in rest of the four cases, he is on bail. Learned Senior Advocate further submitted that the statement of the eye witness P.W.1 that the appellant Nihar had fired the gun shot



and the appellant Suman was standing near the bike at the relevant time of occurrence, cannot be believed as because P.W.2 did not identify the appellant Suman in Court and that apart, P.W.3 stated that three persons came and killed the deceased, who is not a witness to the test identification parade. He further stated that P.W.4 is not a T.I. parade witness as because in his cross-examination, he stated that he had no direct knowledge of the incident and P.W.5 has not identified the appellant Suman in Court. He further submitted that P.W.6, P.W.7 and P.W.11 had not specifically stated the role of the appellant Suman. Learned counsel further submitted that P.W.12 cannot be treated as an eye witness to the occurrence, rather, he is a post-occurrence witness in view of his statements made in cross-examination. He further stated that P.W.14 is not an eye witness to the occurrence, rather he is a witness to the extrajudicial confession made by appellant Nihar about the commission of crime as per Ext.5 as well as leading to recovery of the gun. Learned counsel further submitted that in the cross-examination of P.W.14, who is a witness to the leading to discovery, stated that the statement of the appellant Suman does not bear the time and place where it was recorded and further stated that he did not see the seized article in Court. He



further submitted that the informant (P.W.20) was not present at the time of occurrence. Learned counsel further submitted that the appellant Suman was granted interim bail twice by this Court vide order dated 04.01.2022 in BLAPL No.11447 of 2021 (I.A. No.1381 of 2021) and order dated 22.12.2022 in BLAPL No.121404 of 2022 respectively and after availing the interim bail periods, he surrendered before the learned trial Court in time and never misutilized the liberty and therefore, the bail application of the appellant Suman Kumar Das may be favourably considered.

Mr. Yasobanta Das, learned Senior Advocate appearing for the appellant Babulu @ Nihar Ranjan Das @ Patnaik (in CRLA No.758 of 2023) submitted that out of twelve criminal antecedents, in some cases, the appellant has been acquitted and in some cases, he is on bail. He further submitted that the Taxi Driver of the deceased (P.W.1) has not implicated the appellant Babulu and before his examination, he has not claimed to have identified the unknown persons in his statement recorded under section 161 Cr.P.C., rather he identified the appellant Babulu for the first time in Court. Learned counsel further submitted that P.W.2, who is the salesman of the liquor shop of the informant (P.W.20) though put to T.I. parade, but in



Court, he stated that on hearing the gun sound, he came out of the shop and he further stated that the accused persons on earlier occasion had purchased beer from the shop, and thus, he had seen them prior to the occurrence. He further stated that when he heard the sound of gunshot, he was inside the shop and that the driver was sitting inside the Scorpio until he was called by him. He further stated that the Magistrate did not ask the name of the person (suspects) in his presence whom he identified at the time of T.I. parade. Learned counsel further submitted that P.W.3 stated that three persons came and killed the deceased, but he is not a T.I. parade witness. Learned counsel further submitted that though the prosecution has cited P.W.4 as an eye witness, but he has not been put to T.I. parade and he stated that he had no direct knowledge of the incident. Learned counsel further submitted that though P.W.5 identified the appellant Babulu, but he has not specifically implicated the appellant Babulu as an assailant in the crime. Learned counsel further submitted that P.W.6, who is a contractor, is not an identifying witness, rather he claimed to have identified the five accused persons including the appellants in Court. Learned Senior Advocate almost adopted the arguments advanced by the learned counsel appearing for the appellants Tulia @



Nigamananda Jena and Suman Kumar Das and contended that in view of the evidence adduced during trial, it is very difficult to sustain conviction of the appellant and that he has a good chances of success in the appeal and therefore, the bail application may be favourably considered.

9. Learned counsel for the State Mr. Aurobinda Mohanty, ASC and Mr. Ramakanta Mohanty, Senior Advocate along with Mr. Gouri Mohan Rath, Advocate appearing for the informant opposed the prayer for bail of all the appellants and contended that in view of the evidence adduced during trial against the appellants and more particularly, in view of the criminal antecedents, the appellants should not be released on bail.

10. Adverting to the contentions raised by the learned counsel for the respective parties, let us first discuss the scope of granting bail to the appellant in a conviction case, which is a matter of judicial discretion exercised by the appellate Court under section 389 of Cr.P.C. corresponding to 430 of B.N.S.S. Bail is not an automatic right after conviction, and normal presumption of innocence is replaced by the presumption of guilt. The appellate Court exercises its discretion based on various factors, with the burden of proof generally shifting to the



convicted person to show sufficient grounds for release. The seriousness of the crime is a prime condition. The scope of bail post-conviction is narrower than pre-trial bail, requiring compelling reasons and a careful balance between the individual's liberty and the interest of justice and public safety. The Court must record its reasons in writing and the discretion must be exercised judiciously, not as a matter of routine.

11. In the case of **Preet Pal Singh -Vrs.- State of U.P. reported in (2020) 8 Supreme Court Cases 645**, the Hon'ble Supreme Court held as follows:

"36. There is a difference between grant of bail Under Section 439 of the Code of Criminal Procedure in case of pre-trial arrest and suspension of sentence Under Section 389 of the Code of Criminal Procedure and grant of bail, post conviction. In the earlier case there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the Rule and jail is an exception, as held by this Court in **Dataram Singh v. State of U.P. and Anr.: (2018) 3 Supreme Court Cases 22**. However, in case of post conviction bail, by suspension of operation



of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the Rule and jail an exception attracted, once there is conviction upon trial. Rather, the Court considering an application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) of the Code of Criminal Procedure.”

Recently, the Hon’ble Supreme Court in the case of **State of Bihar -Vrs.- Dhananjay Mishra** in the Criminal Appeals which arise out of SLP (Crl.) Nos.13665, 13666, 13671, 13672 and 13862 of 2025 disposed of on 12.12.2025, has been pleased to observe that criminal antecedents constitute a vital and determinative factor which ought not to be ignored while considering an application for grant of bail, as they reflect the conduct, character and behavioural pattern of the accused and bear directly upon the likelihood of misuse of liberty. It was further held that apparent omission on the part of the High Court in felling to advert to the antecedent of the accused



demonstrates a non-application of mind to a germane and determinative consideration, thereby rendering the exercise of discretion manifestly arbitrary. It was further held that the impugned orders, having been passed without balancing the liberty of the accused against the interest of society and administration of criminal justice, stand vitiated in law.

Law is well settled that the Appellate Court can adjudicate the bail application on the basis of evidence adduced during trial and also keeping in view the nature of accusations against the appellant, the manner in which the crime has been committed, the gravity of the offence and the desirability of releasing the appellant on bail. If there are good chances of success in the appeal on the basis of the evidence adduced during trial and there is no reasonable prospect of early hearing of the appeal in the near future, the same can also be taken into account. If the appellant has not misutilized the liberty granted to him during the pendency of the trial and there is no chance of absconding of the appellant and there is absence of any criminal antecedents against the appellant, those aspects are certainly plus points in favour of the appellant and the same can also be taken into account while adjudicating the bail application. However, a detailed documentation on the merits of the appeal



by making threadbare analysis of the evidence adduced during trial should be avoided at the stage of consideration of the bail application inasmuch as that would have an adverse effect on the final adjudication of the Criminal Appeal.

In the case of **Kishori Lal -Vrs.- Rupa and others reported in (2004) 7 Supreme Court Cases 638**, the Hon'ble Supreme Court outlined the factors that require to be taken judicial notice while dealing with section 389 Cr.P.C. in cases involving serious offences like murder etc. and therein it has been held and observed that the appellate Court is duty bound to objectively assess and record reasons for the conclusion that the case warrants suspension of execution of sentence and grant of bail to the convict. It is also held therein that mere fact that during the trial, the convicts were granted bail and there was no allegation of misuse of liberty by them is really not of much significance, since the effect of bail granted during trial becomes irrelevant on its completion and after the accused persons are found guilty, hence, such a plea does not per se warrant suspension of execution of sentence and what really the matters is, whether, reasons do really exist to suspend its execution.

Similarly, in the case of **Sidhartha Vashisht @ Manu Sharma -Vrs.- State (NCT of Delhi) reported in**



(2008) 5 Supreme Court Cases 230 infamously known as Jessica Lal murder case, the Apex Court had the occasion to consider and discuss earlier judicial pronouncements and held that observations on merit one way or the other are likely to prejudice the parties in appeal, hence, not to consider the correctness or otherwise of the evidence on record but at the same time, it cannot be overlooked that the accused having been found guilty and convicted by a competent criminal court, initial presumption of innocence in his favour is no more available.

In the case of **Bhagwan Rama Shinde Gosai & others -Vrs.- State of Gujarat reported in (1999) 4 Supreme Court Cases 421**, it is held by the Hon'ble Supreme Court that suspension of sentence can be considered by the Appellate Court liberally unless there are exceptional circumstances but if for any reason, the sentence of a limited duration cannot be suspended, every endeavour should be made to dispose of the appeal on merit, otherwise, the valuable right of appeal would be an exercise in futility by efflux of time and when the Appellate Court finds that due to practical reasons, the appeal cannot be disposed of expeditiously, it must bestow special concern in the matter of suspending sentence so as to make such right of appeal meaningful and effective.



It is concluded in the case of **Ash Mohammad -Vrs.- Shiv Raj Singh @ Lalla Babu & another reported in (2012) 9 Supreme Court Cases 446** that a question should be posed, whether, the accused deserves to be enlarged on bail or not and only thereafter, issue of imposing conditions would arise and the period of custody is a relevant factor, while considering the same but simultaneously, the totality of circumstances and the criminal antecedent are also to be weighed in the scale of collective cry and desire.

In the case of **Omprakash Sahni -Vrs.- Jai Shankar Chaudhary and others reported in (2023) 6 Supreme Court Cases 123**, the Hon'ble Supreme Court while considering the suspension of execution of sentence under Section 389 Cr.P.C., as it was allowed by the Patna High Court, concluded that the endeavour on the part of the Court should be to ensure as to whether the case presented by the prosecution and accepted by the trial Court can be said to a case in which ultimately the convict stands for fair chance of acquittal and while undertaking the exercise to ascertain the same, what is to be looked into is something palpable and very apparent on the face of the record, on the basis of which, it can arrive at a prima facie satisfaction that the conviction may not be legally



sustainable but with a word of caution that the Appellate Court should not re-appreciate the evidence at that stage and try to pick up few lacunas or loopholes randomly from the case of the prosecution as it is not a correct approach and ultimately held that the execution of sentence suspended was not justified.

12. Keeping in view the scope of granting bail to the appellants as discussed above, we find that the learned trial Court in the impugned judgment after discussing the evidence of the doctor conducting autopsy and giving opinion that the cause of death of the deceased was due to shock resulting from haemorrhage as a result of injuries to the head, chest and abdomen, which were ante mortem in nature and sufficient in ordinary course of nature to cause death and that all the gunshot injuries were possible by bullet injuries, came to hold that the death of the deceased was homicidal in nature. The learned trial Court also discussed the evidence of each of the prosecution witnesses, the ballistic report, the T.I. parade identification of some of the appellants as well as the identification in Court, the recovery of weapon of offence and particularly considering the evidence of the eye witnesses, came to hold that the prosecution has successfully established the offence under section 302 of the I.P.C. The criminal conspiracy



part was also discussed and it was found to have been successfully established by the prosecution. Similarly, the possession of the fire arms by the appellants was also discussed and the learned trial Court has found that the prosecution has successfully established the charges under the Arms Act.

13. Though the learned counsel for the appellants raised various contentions as to why the testimonies of the eye witnesses should not be believed so also the criminal conspiracy, however, if such arguments are dealt with in detail at this stage, we are of the humble view that the same is likely to have some effect on the merits of the appeals and it would ultimately prejudice the appellants. Therefore, we do not propose too much of discussions and elaboration on the points agitated while considering the plea of suspension of sentence pending appeal. If an exercise is made for detailed examination of the evidence touching upon the merits of the case, it would not be proper and justified.

In the case in hand, keeping in view the nature and gravity of the crime, the nature of evidence adduced by the prosecution during trial, the criminal proclivity of the appellants to commit heinous crimes, we find no sufficient grounds for grant



of bail to the appellants pending disposal of the appeal as the same would not be in the interest of justice.

14. Accordingly, all the interim applications i.e. I.A. Nos. 926 of 2023, 1366 of 2023, 2097 of 2023 and 2508 of 2023 in CRLA Nos.423 of 2023, 629 of 2023, 758 of 2023 and 1141 of 2023 respectively filed by the appellants stand rejected.

The appellants Tulia @ Nigamananda Jena and Babulu @ Nihar Ranjan Das @ Patnaik, who are on bail, shall surrender before the learned trial Court forthwith, failing which, the learned trial Court shall take coercive steps for their arrest and after their arrest, commit them to judicial custody.

However, taking into account the period of detention of the appellants in judicial custody, if any applications are filed by the appellants for expeditious hearing of the Criminal Appeals, the same shall be considered in accordance with law.

S. S. Mishra, J. I agree.

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S.K. Sahoo, J.

.....
S. S. Mishra, J.

Signature Not Verified
Orissa High Court, Cuttack
Digitally Signed
Signed by: PRAMOD KUMAR SAHOO
Reason: Authentication
Location: HIGH COURT OF ORISSA
Date: 24-Dec-2025 14:19:11