

S.PANDA,J

W.P. (CRL) NO.31 OF 2008 (Dt. 29. 04.2011)

NAMITA PANDA

.....Petitioner

.Vrs.

STATE OF ORISSA & ORS.

.....Opp Parties

CONSTITUTION OF INDIA ,1950 – ART-226.

**For Petitioner : M/s. Samir Kumar Mishra,M.R. Dash, S.K.
Samantaray, A. Kijriwal, O. P. Sahu &
S. Mohapatra.**

**For Opp. Parties : Leaned Standing Counsel
(for o.p. nos.1 to 4 and 6)
: Mr. Saurjya Kanta Padhi, Sr. Advocate
(for o.p. no.5)**

S. PANDA, J. In this writ application (criminal), the petitioner has prayed for a direction to make investigation by the CBI/CID to unravel the truth regarding the death of her husband and apprehend the real culprits.

2. The facts leading to the present case are as follows:

The deceased Prasana Kumar Panda was the Marfatdar Sebayat of Narayani Thakurani Bije at Solapata in whose name the land appertaining to Plot No.261 under Khata No.431 of Mouza-Machhipara was originally recorded. The specific allegation of the petitioner is that one Narayan Mahapatra, Laxman Behera, Prahallad Behera tried to construct illegal kuchha road over the aforesaid plot of Narayani Thakurani and obstructed the cultivation of the land for which FIR was lodged. Since the police did not take any action, W.P.(C) No.1827 of 2004 was filed to take appropriate steps against the culprits. On 22.2.2005, this Court disposed of the said writ application and giving liberty to the petitioner therein to approach the concerned authority for redressal of his grievance. As such Laxman Behera and others were very much aggrieved by the said order. On 20.9.2005, they assaulted the deceased and abused him in filthy language and also snatched away his wrist-watch for which ICC Case No.14 of 2005 was filed before the learned S.D.J.M., Nayagarh for commission of offences under Sections 342/343/294/323/379/506/34, IPC. To take revenge, the culprits trapped one Sita Behera for the purpose of materializing their evil intention which ended with a compromise on the active participation of said Sita Behera. However, the culprits in fact narrated the objection raised by the deceased for construction of the road and tried to get rid of him.

Accordingly, on 17.9.2007 at about 8.00 P.M. in the evening, the culprits killed Prasana Kumar Panda by pressing his neck, inflicted cut injury on the dead body and threw the dead body to the village pond. After the dead body was discovered, FIR was lodged on 18.9.2007 which was registered as Nayagarh P.S. Case No.307 of 2007 in which Sita Behera and other unknown persons were named as accused persons. The alleged offences are under Sections 302/201/120(b), IPC. On the very day, the media persons put some questions to Sita Behera who described the involvement of the accused persons in the heinous crime and the manner in which they killed the husband of the petitioner. The same was also telecasted in OTV. After knowing all the above facts, the petitioner approached the IIC, Nayagarh Police Station to take action against the culprits. However, only Sita Behera was apprehended on 23.9.2007. Finding no other way, on 24.9.2007 the petitioner filed representation before opposite party nos.2 and 3, the Director General of Police, Cuttack and the Superintendent of Police, Nayagarh respectively by registered post. Again on 4.10.2007, she represented to opposite party nos.2 and 3 to cause an enquiry/investigation with regard to the death of her husband and apprehend the culprits immediately, or else the evidence would be destroyed, but no action has yet been taken. Therefore, she has filed this present application for investigation of the matter by the CBI/CID. In the meantime, the case has already been committed to the Court of Session and registered as ST Case No.59 of 2009 pending before the learned Ad hoc Additional Sessions Judge, FTC, Nayagarh.

3. In pursuance of the application filed under Section 319, Cr.P.C., the court below issued NBW for appearance/production of five more persons namely, Laxman Behera, Manguli Behera, Jaya Behera, Sankar Behera and Natia Behera as accused persons to face trial along with Sita Behera. The said application was allowed and a direction was given to add those persons as accused persons vide order dated 5.12.2009. Challenging the said order, the accused filed CRLMC No.2 of 2010 before this Court. On 14.1.2010, this Court did not interfere with the order impugned therein and directed that if the accused persons surrender before the learned Ad hoc Additional Sessions Judge, FTC, Nayagarh within three weeks from the date of the order and move for bail, the same shall be considered and disposed of on its own merit. The accused persons instead of complying with the aforesaid direction, filed BLAPL No.2023 of 2011 for grant of anticipatory bail by suppressing the said fact and obtained an order by giving a false certificate that "the matter, out of which this Bail Application arises was never before this Hon'ble Court in any earlier occasion". It shows that the prosecution is not interested to bring the real fact to the notice of the court and they are not taking any action since 2007 to apprehend the accused persons when there are ample materials against them and the trial court has already passed the order to implead them as accused persons.

4. Considering the above conduct of the investigating agency who are duty bound to see that rule of law prevails and the real culprits should be prosecuted in a system of justice administration, this Court is of the view that in this case they have failed to discharge the said duty. Therefore, this Court directs the Superintendent of Police, CID (Crime Branch) to take up the investigation of Nayagarh P.S. Case No.307 of 2007 corresponding to G.R. Case No.567 of 2007 pending before the learned Ad

hoc Additional Sessions Judge, FTC, Nayagarh and take steps to apprehend the accused persons. This Court further directs the Superintendent of Police to hand over all the relevant records to the Superintendent of Police, CID (Crime Branch) immediately.

5. The writ application (criminal) is accordingly disposed of.

Writ petition disposed of.