

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CRLA No.1321 of 2023**

**1. Premraj Podh**

**2. Magsir Podh**

....

**Appellants**

*Mr. H.S. Mishra, Advocate*

*-versus-*

**State of Odisha & another .... Respondents**

*Mr. Rajesh Tripathy,*

*Addl. Standing Counsel*

*Mr. S.K. Dwibedi, Advocate (for  
respondent no.2.)*

**CORAM:**

**JUSTICE S.K. SAHOO**

**ORDER**

**31.01.2024**

**Order No.**

03.

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

Learned counsel for the State submitted that notice on the informant has been made sufficient.

None appears for the informant.

Heard Mr. H.S. Mishra, learned counsel for the appellants and learned counsel for the State.

This is an appeal under section 14-A of S.C. & S.T. (PoA) Act, 1989 in connection with Special G.R. Case No.49 of 2023 arising out of Balangir Sadar P.S. Case No.279 of 2023 pending in the Court of learned Presiding Officer, Excl. Special Court, SC & ST (PoA) Act, Bolangir for offences punishable under section 302/34 of the Indian Penal Code read with section 3(2)(v) of the S.C.

& S.T. (PoA) Act.

The appellants moved an application for bail before the Court of learned Presiding Officer, Excl. Special Court, SC & ST (PoA) Act, Bolangir, which was rejected on 24.11.2023.

Learned counsel for the appellants submitted that the appellants are in judicial custody in connection with this case since 23.07.2023 and they have been charge sheeted under section 302/34 of the Indian Penal Code read with section 3(2)(v) of the S.C. & S.T. (PoA) Act. He further submits that the eye witness account indicates that it was the deceased who was an aggressor and he assaulted appellant no.1 Premraj Podh and then broke open the front glass of his auto rickshaw and due to such overt-act committed by the deceased, the occurrence has taken place. It is further submitted that both the appellants assaulted the deceased by means of a 'lathi' and 'merha' and taking into account the surrounding circumstances, it cannot be said that the ingredients of the offence under section 302 of the I.P.C. are made out. Learned counsel further submits that the appellants have got no criminal antecedents and even if it is stated that prima facie case is made out on the basis of the statements of the eye witnesses, but in absence of any materials that there is any chance of absconding or tampering with the evidence, the bail application may be favourably considered.

Learned counsel for the State placed the statements of the eye witnesses, particularly the statement of Jublal

Naik and further placed the post mortem report, which indicates that the cause of death of the deceased was on account of cranio cerebral injury. Learned counsel for the State further submits that the weapon of offence seized was sent to the doctor, who conducted post mortem examination and he opined that the injuries sustained by the deceased were possible by such weapon. However, he submits on verification of case records that the appellants have got no criminal antecedent.

Learned counsel for the informant opposes the prayer for bail and submitted that whether the case would come within the purview and scope of right of private defence or not or the exception as provided under section 300 of I.P.C. is attracted, is to be adjudicated during trial. He further submits that the manner in which the appellants have taken the law into their own hand and the overt-act committed by them as well as the post mortem report findings, bail should not be granted to the appellants.

Considering the submissions made by the learned counsel for the respective parties, the nature of accusation against the appellants, the surrounding circumstances under which the offences are alleged to have been committed, absence of any criminal antecedents against any of the appellants and further taking into account the period of detention of the appellants in judicial custody, I am inclined to release the appellants on bail.

Let the appellants be released on bail in the aforesaid case on furnishing a bail bond of Rs.50,000/- (rupees fifty thousand) each with two local solvent sureties each for the like amount to the satisfaction of the learned Court in seisin over the matter with further conditions as the learned Court may deem just and proper with further conditions that they shall appear before the learned trial Court on each date to which the case would be posted for trial and shall not tamper with the prosecution evidence.

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

The CRLA is accordingly disposed of.

Issue urgent certified copy of this order on proper application.

**( S.K. Sahoo )**  
**Judge**

PKSahoo

Signature Not Verified

Digitally Signed  
Signed by: PRAMOD KUMAR SAHOO  
Designation: Secretary  
Reason: Authentication  
Location: HIGH COURT OF ORISSA  
Date: 01-Feb-2024 12:08:33

