

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.40 of 2021

Kanha @ Sanatan Bisoi

.... ***Appellant***
Mr. B.P. Rath, Advocate

-versus-

State of Odisha and another

.... ***Respondents***
Mr. M.K. Mohanty, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER
29.03.2022

Order No.

10.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. This is an application under Section 14-(A) of the S.C. and S.T. (Prohibition of Atrocities) Act, 1989.
3. Despite valid service of notice on the Informant/Respondent No.2, none appears on behalf of the Informant/Respondent No.2 to oppose the bail application of the Appellant.
4. Heard learned counsel for the Appellant and leaned counsel for the State-Respondent.
5. The present appeal is directed against the order dated 03.06.2020 passed by the learned Additional Sessions Judge-4, Bhubaneswar in T.R. Case No.75 of 2019 arising out of Dhauli P.S. Case No.08 of 2019, which was registered for commission of alleged offence under Sections 363/366/376(2)(j)/376(2)(n), I.P.C. read with Sections 3(1)(w)(i)/3(2)(v)/3(1)(w)(ii) of the S.C. and S.T. (PoA) Act

read with Section 6 of the POCSO Act.

6. Perused the case record, statement of the witnesses, statement of the victim recorded under Section 164, Cr.P.C. as well as other relevant materials.

7. The prosecution story, in a nutshell, is that on 20.01.2019 at about 5.30 A.M., informant's daughter was being kidnapped by the petitioner without the knowledge of the informant when the informant's family in deep sleep.

8. Learned counsel for the Appellant submits that the petitioner is in custody since 09.02.2019 and he further submits that investigation is concluded and charge-sheet has been submitted by the police.

9. Further, learned counsel for the petitioner submits that out of seventeen witnesses, three witnesses have been examined so far. Although the case is of the year 2019, it appears that the trial would not be completed in near future. However, the petitioner undergone imprisonment for more than three years in the meantime. He further submits that the medical examination does support the case of the petitioner. Further he also submits that there was love relationship between the petitioner and victim and the victim eloped with the present petitioner. Due to cast problem, the family members of the petitioner did not like the victim for which the present case arose. It is also submitted that there is no scope for absconding or fleeing away from the hands of the justice, as the petitioner is permanent resident of the locality. In the event the petitioner shall be released on bail, he shall cooperate with the trial court on each date fixed.

10. Learned counsel for the State contended that the alleged crime is heinous in nature and the victim is a minor at the time of occurrence and as such, no leniency should be shown to the accused. He further submits that although the victim had admitted about the love affair between the victim and the accused, the same does not give any right to the accused to have a sexual relationship with the victim against her will as alleged by her.

11. Further upon scrutiny of the rejection order, it is found that the learned court below has rejected the bail application of the Appellant mainly on the ground of the medical examination report and the accused kept sexual relationship with the victim without her consent. Upon the scrutiny of the F.I.R., this Court is of the considered view that the victim and the Appellant were in love relation. Since the marriage did not materialized, the victim/Respondent No.2 had lodged this F.I.R. alleging that despite promise to marry her accused/Appellant sexually exploited her and thereafter he refused to marry her. Considering the grievance of the victim/Respondent No.2 such a plea is improbable at this stage and the said evidence can only be considered during trial of the case.

12. Considering the aforesaid facts and the nature of allegations made by the informant as well as age of both the victim/Respondent No.2 as well as accused/Appellant and custodial period of detention of the petitioner, this Court is inclined to allow this appeal by setting aside the rejection order dated 03.06.2020 passed by the learned passed by the learned Additional Sessions Judge-4, Bhubaneswar in T.R. Case No.75 of 2019.

13. Hence, let the Appellant be released on bail by furnishing a

bail bond of Rs.30,000/- (rupees thirty thousand) with two local solvent sureties each for the like amount to the satisfaction of the learned court in seisin over the matter subject to the following conditions that:-

- I. The Appellant shall not tamper with the prosecution evidence or shall not try to threaten or influence the witnesses, victim and her family members in any manner whatsoever while on bail;
- II. While on bail, he shall not make any attempt to come in contact with the victim or terrorize the victim and her family members;
- III. He shall not make any default in attending the court during trial on each date;

Violation of any of the terms and conditions of bail, shall entail cancellation of the same.

14. It is made clear that any observation made herein is confined to this bail order only. The court below is directed to proceed with the trial without being influenced by the observation made in this order or any other factor.

15. With the aforesaid observation, the CRLA is disposed of.

Urgent certified copy of this order be granted on proper application.

(A.K. Mohapatra)
Judge

