

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.50 of 2021

Akash Pradhan

....

Appellant

Mr. Saluddin Khan, Advocate

-versus-

State of Odisha and another

....

Respondents

Mr. K.K. Nayak, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

24.02.2022

Order No.

04.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. This is an application under Section 14-A(2) of the S.C. and S.T. (PoA) Act.
3. The present appeal is directed against the order dated 13.01.2021 passed by the learned Special Judge, Jharsuguda in C.T.(Special) No.55 of 2020 arising out of Jharsuguda P.S. Case No.705 of 2020, which was registered for commission of alleged offence under Sections 417/419/376(2)(n)/294/506/34, I.P.C. read with Section 3(1)(r)(s)/3(20(v)(va) of the S.C. and S.T. (PoA) Act.
4. Heard Mr. Salauddin Khan, Advocate, who is seeking permission on the basis of prisoner's petition dated 21.01.2022 to appear and plead on behalf of the accused/Appellant.
5. Permission is granted.
6. Heard Mr. K.K. Nayak, learned Additional Standing Counsel

for the State.

7. Despite valid service of notice on the informant/Respondent No.2, none appears on behalf of the informant/victim when the matter is called.

8. 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.

9. The case of the prosecution, as it reveals from the F.I.R., is that on 04.10.2020, the informant (victim girl) lodged a written report before the I.I.C. Jharsuguda Police Station alleging therein that since 2014 the accused/Appellant and the informant were having a love affair. The informant was suggesting the accused/Appellant for their marriage but, the accused/Appellant despite his promise to marry her after marriage of his elder brother, did not marry the victim. However, on the pretext of marriage, the accused/Appellant kept sexual relationship with the victim against her will. It is further alleged that on 20th January, 2020, both the accused/Appellant and the victim girl had been to Puri wherein stayed in hotel and kept sexual relationship with the victim. Later on when the victim asked the accused to marry her, the accused did not agree to marry her saying that the victim belongs to a lower caste and threatened to upload the photographs of their intimate moment in the internet.

10. Learned for the Appellant submits that on the basis of the allegation made in the F.I.R., no case is made out under Section 376, I.P.C. against the accused/Appellant as ingredients of an offence under Section 375, I.P.C. is lacking. He further submits that the offence of the S.C. and S.T. (PoA) Act are also not attracted to the facts of the present case. It is also pointed out to the Court that there is long delay in lodging of the F.I.R. and it is a fact which has been admitted by the victim that both of them had a love affair since long.

Therefore, the alleged sexual act had taken place with the consent of both sides. Moreover, it was strenuously argued by the learned counsel for the Appellant that the Respondent No.2 is aged about 27 years whereas the Appellant is aged about 24 years. As such, the question of making any false promise or misguiding the Respondent No.2 does not arise.

11. Upon bare perusal of the rejection order, it is seen that learned court below has observed that the victim girl was present in court on the date when the bail application was heard. Further, she had objected to the bail application of the accused on the ground that the accused kept sexual relationship against her will and denied to marry her.

12. Learned counsel for the State contended that the alleged crime is heinous in nature 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.

13. Further 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, the statement of the victim and that 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.

14. 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, this Court is inclined to allow this appeal by setting aside the rejection order dated 13.01.2021 passed by the learned Special Judge, Jharsuguda in C.T.(Spl.) Case No.55 of 2020.

15. 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;
- 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.

16. 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.

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

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

Jagabandhu

(*A.K. Mohapatra*)
Judge

