

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 1226 of 2022

Ashutosh Das

....

Petitioner

Mr. G. Mohanty, Advocate

- Versus -

State of Odisha

.... **Opposite Party**

Mr. S.K. Mishra, Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER

26.04.2022

Order No.
04.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned Addl. Standing Counsel for the State.
3. As directed, the learned State counsel has obtained instructions from the IIC, who has enquired into the allegation of threats being given by the father of the accused-petitioner to the victim. From the report of the I.O. it is submitted that the allegation has not been substantiated by any independent witness or neighbour and that there is no instant threat to the victim or her family from the side of the accused. However, the house of the accused being located nearby the house of the victim there is ill-feeling between two families.
4. The petitioner is in custody since 08.01.2022 in connection with Balikuda P.S. Case No.350 of 2021 corresponding to Special G.R. Case No. 67 of 2021 pending in the Court of learned Addl. Sessions Judge-cum-Special Judge, Jagatsinghpur for the alleged commission of offence under Section 376(2)(n)/506/323/34 of IPC read with Section 6 of POCSO Act.

5. The allegation is that the petitioner and the victim were in love with each other and also had physical relationship on two to three occasions but thereafter being reprimanded by their respective family members, they stopped the relationship. However, the petitioner continued to harass the victim by sending messages over phone with request to keep relationship with him.

6. Learned counsel for the petitioner submits that this is a clear case of consent, where the matter is reported to police only because relationship was exposed.

7. Learned counsel appearing for the informant has opposed the prayer for bail by submitting that the family members of the petitioner have been repeatedly threatening the victim and his family members and tried to put pressure on them to withdraw the case.

8. Learned Addl. Standing counsel has also opposed the prayer for bail by submitting that having regard to the tender age of the victim, her consent is immaterial.

9. Considering the rival submissions as noted above, the materials on record and in particular the statement of the victim recorded under Section 164 Cr.P.C., this Court is prima facie of the view that there is no allegation as such of commission of forcible sexual intercourse. While it is true that the consent of the victim is not relevant, however, a bare perusal of the FIR does not reveal any specific instance rather, it refers to the relationship that both of them had in the past.

10. Considering the above facts, the period of detention in custody and the fact that charge sheet has already been submitted, I am inclined to allow the prayer for bail. Let the petitioner be released on bail on such terms and conditions as the court in seisin over the

matter may deem fit and proper to impose including the condition that he shall not approach, threaten, coerce or pressurize the victim or her family members in any manner whatsoever. Further he shall personally appear before the trial court on each date of posting of the case and in case of even a single default, necessary orders shall be passed by the said Court to take him to custody again.

11. BLAPL is accordingly disposed of.

12. Issue urgent certified copy as per rules.

(Sashikanta Mishra)
Judge

A.K. Rana

