

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.2024 of 2022

1. Barsa Malik
2. Baishnab Mallik

.... **Petitioners**

Mr.D.J. Sahoo, Advocate

-versus-

State of Odisha

.... **Opp. Party**

Mr.S.S. Pradhan

Addl. Government Advocate

CORAM:
JUSTICE S.K. SAHOO

ORDER
15.03.2022

Order No.

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

Heard learned counsel for the petitioners and learned counsel for the State.

This is an application under section 438 Cr.P.C. for grant of anticipatory bail to the petitioners in connection with Jambo Marine P.S. Case No. 58 of 2021 corresponding to Special Case No.96 of 2021 pending in the Court of learned Special Judge, Kendrapara for commission of alleged offences under sections 363, 376(2)(n), 376(3), 344, 323, 34 of the Indian Penal Code read with section 6 of the POCSO Act.

Perused the F.I.R. annexed to the anticipatory bail application.

Learned counsel for the petitioners submitted that the main allegation is against one Mithun Mallik who happens to be the brother of the petitioner no.1 who has been taken into judicial custody and his bail application is pending for consideration and since there is no clinching material against the petitioner no.1 and she is a lady, keeping in view the proviso to section 437 (1) of Cr.P.C., the anticipatory bail application of the petitioner no.1 may be favourably considered.

Learned counsel for the State, on the other hand, opposed the prayer for anticipatory bail and placed the 164 Cr.P.C. statement of the victim from which it appears that the petitioner no.1 actively participated in the commission of the crime and helped her brother Mithun Mallik. Learned counsel for the State further placed sub-section (4) of section 438 of Cr.P.C. which indicates that the provision under section 438 of Cr.P.C. will not be applicable to any case involving the arrest of any person having committed an offence under sub-section (3) of section 376 of the Indian Penal Code and other specific offences. Learned counsel for the State fairly submitted that in the 164 Cr.P.C. of the victim, nothing is there against petitioner no.2 Baishnab Mallik.

Considering the submissions made by the learned counsel for the respective parties, the nature and gravity of accusation against the petitioner no.1, while not inclining to release her on bail, it is observed that in the event she surrenders in the Court below and moves for bail before the learned Court below within a period of four weeks from today, the same shall be disposed of as expeditiously as possible by the Court below in accordance with law and proviso to section 437(1) Cr.P.C. shall be taken into account at the time of adjudication of the bail application. The case records shall be made available to the Court concerned.

So far as petitioner no.2 Baishnab Mallik is concerned, considering the nature of accusation against him and since the victim has not alleged anything against him in her 164 Cr.P.C. statement

, I am inclined to release him on anticipatory bail. Accordingly, this Court directs that in the event of arrest of petitioner no.2 Baishnab Mallik in connection with the aforesaid case, he shall be released on bail on furnishing bail bond of Rs.10,000/- (rupees ten thousand) with two sureties each for the like amount to the satisfaction of the arresting officer with further conditions that he shall make himself available for interrogation by the I.O. as and when required and he shall not, directly or indirectly, make any inducement, threat or promise to any person

acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Investigating Officer.

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

Accordingly, the ABLAPL is disposed of.

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

(S.K. Sahoo)
Judge



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