

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.2073 of 2022

Khagapati Bate

.... ***Petitioner***
Mr. S. Mishra, Advocate

-versus-

State of Orissa and another

.... ***Opp. Parties***
Mr. P.K. Pattnaik, A.G.A.

CORAM:
JUSTICE G. SATAPATHY

ORDER
09.12.2022

Order No.

- 07.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. This is an application U/S. 439 of Cr.P.C. by the Petitioner for grant of bail in connection with Mathili P.S. Case No.143 of 2021 corresponding to T.R. Case No. 50 of 2021 of the Court of learned Additional Sessions-Judge Cum-Special Judge, Malkangiri for commission of offences punishable U/Ss. 376(2)(n) and r/w Sec. 6 (1) of POCSO Act, on the allegation of committing rape and aggravated penetrative sexual assault upon the victim.
 3. In the course of hearing of the bail application, Mr. S. Mishra, learned counsel for the Petitioner submits that although the Petitioner is in custody since 20.09.2021, but trial is yet to commence and all the allegations levelled against the Petitioner are false and motivated and in case the materials on record are considered, no offence U/S. 376(2)(n) of IPC or Section 6 of POCSO Act would be attracted against the Petitioner, since the victim has already attained the age of consent and the allegations of sexual assault appears to be consensual in nature. On the aforesaid submission, learned counsel for the Petitioner prays to enlarge the Petitioner on bail.
 4. On the contrary, Mr. P.K. Pattnaik, learned A.G.A. submits that the date of birth of the victim is 28.05.2003 and, therefore, at the time of

commission of offence, the victim was minor and, thereby, the so called consent as submitted on behalf of the Petitioner is not a valid consent to consider the allegation as consensual sex. It is further submitted that the Petitioner has forced the victim to get in love with him and indulge in sex and thereby, the victim got pregnant resulting in birth of a dead child, but the Petitioner was a married person and he by giving false assurance of marriage has cohabited with the victim and, therefore, the Petitioner is not entitled to bail.

5. Considering the rival submissions made, the nature and gravity of accusations raised against the Petitioner and taking into consideration the surrounding circumstance including the pre-trial detention of the Petitioner since 20.09.2021 and regard being had to the age of the victim and taking into consideration the other circumstance on record in entirety, this Court admits the Petitioner to bail.

6. Hence, the prayer for the bail of the petitioner stands allowed and the petitioner is allowed to go on bail on furnishing bail bonds of Rs.25,000/- (Rupees Twenty Five Thousand) with two solvent sureties each for the like amount to the satisfaction of the learned Court in seisin of the case on such terms and conditions as deem fit and proper with further conditions that the petitioner shall attend the trial Court on each date of posting without fail unless his attendance is dispensed with and that he shall not leave the jurisdiction of the trial Court without prior permission till disposal of the case.

It is clarified that the Court in seisin of the case will be at liberty to cancel the bail of the Petitioner without further reference to this Court, if any of the above conditions are violated or a case for cancellation of bail is otherwise made out.

7. Accordingly, the BLAPL stands disposed of.

8. Issue urgent certified copy of the order as per Rules.

(G. Satapathy)
Judge

