

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.3352 of 2022

Ansuman Mohapatra

....

Petitioner

Mr. G.Mukherji, Sr.Advocate,
M/s. A.Mukherji, Advocate

-versus-

State of Odisha and another

....

Opposite Parties

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

Mr.A.Mohanty, Advocate
(For O.P.No.2)

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER

29.6.2022.

Order No.

12. 1. This matter is taken up through hybrid mode.
2. The Petitioner is in custody in connection with Keonjhar Town P.S. Case No.227/2021 corresponding to Special Case No.53/2021 pending in the court of learned Addl. Sessions Judge-cum-Special Judge, Keonjhar for the alleged commission of the offences under Sections 341/376-AB of the I.P.C. read with Section 6 of POCSO Act and Section 3(2)(v)(va) of S.C. and S.T. (P.A.) Act.

3. The facts of the case are that an F.I.R was lodged on 23rd June, 2021 in Keonjhar Town P.S. by one Monika Sahu working as social worker in Open Shelter Home (Prakalpa) in the district of Keonjhar. It was alleged that the victim, who was an inmate of the said shelter home, having exhibited certain physical abnormalities such as bloating of her belly, was taken to DHH, Keonjhar for check up on 22nd June, 2021. It was found that she was pregnant and that her EDD was 26th August, 2021. On repeated questioning the victim disclosed the name of the Petitioner as having caused the pregnancy. It was further revealed in the investigation that the victim was a destitute tribal girl, forsaken by her parents and the wife of the Petitioner had taken her to her house. The wife of the Petitioner remained absent for four days and taking advantage of it, the Petitioner committed forcible intercourse with her for four days. In the DNA test conducted during investigation, it was revealed that the Petitioner and the victim are the biological parents of the still born child delivered by the victim subsequently.

4. Heard Mr. G. Mukherji, learned Senior Counsel with M/s. A. Mukherji for the Petitioner and Mr. S.K.Mishra, learned Addl. Standing Counsel for the State.

5. It is submitted by Mr. G. Mukherji, learned Senior Counsel, that the entire case has been falsely foisted against the Petitioner at the instance of one Jagatjita Dash, who is an Advocate and Executive Body Member of Keonjhar Bar Association and also the Chairman of the Child Welfare Committee (CWC), Keonjhar. The said Jagatjita Dash had lodged an F.I.R. being Keonjhar P.S. Case No.43/2021 corresponding to Special G.R. Case No.4/2021 against the Petitioner and his wife accusing them of assaulting her mercilessly and outraging her modesty. Further, a civil suit has been filed by one Prashanta Mishra in which the Petitioner and his brother have been arrayed as the defendants. The said Jagatjita Dash is related to the Plaintiff being the sister-in-law of his daughter. This, according to Mr. Mukjherji, is the genesis of the dispute, which led the informant to lodge a false F.I.R. leading to registration of the present case against the Petitioner. The informant, being a social worker running an NGO in

Keonjhar is subservient to the Chairman of CWC, Jagatjita Dash. It is further argued by Mr. Mukherji that the victim was rescued from the house of the Petitioner on 28th January, 2021 and was medically examined on 3rd March, 2021 and 6th April, 2021, but no abnormalities or any sign of pregnancy was detected. Therefore, the pregnancy allegedly detected on 22nd June, 2021 is entirely false. Moreover, the so called DNA test conducted to establish the paternity of the child is entirely contrary to law as the so-called samples were obtained without knowledge or consent of the Petitioner. Even accepting all the allegations on their face value, the fact that the ossification test has placed the age of the victim between 18 to 21 years, it has to be treated as a clear case of consent and, hence, the alleged offences are not made out.

6. Mr. S. K.Mishra, learned Addl. Standing Counsel for the State, has opposed the prayer for bail by submitting that the reference to the previous dispute between Jagatjita Dash and the Petitioner is irrelevant as there are adequate materials on record to show commission of the offence by the Petitioner. Referring to the statement of the victim recorded under

Sections 161 and 164 of Cr.P.C., it is submitted by Mr. Mishra that it clearly shows the complicity of the Petitioner in the alleged occurrence. Since the Petitioner has sexually exploited a minor destitute tribal girl making her pregnant thereby, no leniency whatsoever should be shown to him.

7. As it appears from the record, the Petitioner and his wife had initially rescued the victim girl, who was moving around in a destitute manner as her father had forsaken her. The wife of the Petitioner being absent for four days, the Petitioner repeatedly committed sexual intercourse with the victim. All these facts are clearly reflected in the statement of the victim recorded under Section 164 of Cr.P.C. On the face of such tell-tale evidence, the plea of previous enmity and false implication pales into insignificance as it is a matter that can be considered only during trial. As regards the age of the victim, it is seen that the doctor examining her has placed it at 18 to 21 years, which is said to be her bone age. Even accepting for the sake of argument that the victim was a major girl, the same will not absolve the Petitioner of his guilt in view of the fact that there is nothing in the statement of the victim to even remotely show

that she had consented to such relationship. In any case, the Petitioner, in view of his developed social and economic status was in a position to dominate the will of the victim, whose status is obviously no match to his. Thus, the so called consent, if any, can have no relevance at least at this stage. As regards the DNA test report, which clearly shows that the Petitioner is the biological father of the still-born child delivered by the victim, the contentions raised by Mr. Mukherji with regard to its evidentiary and probative value can only be considered at the time of trial. So even after accounting for all the contentions raised by the Petitioner, the statement of victim remains intact which clearly shows commission of the alleged offence by the Petitioner.

8. Having regard to the above facts, the fact that trial is yet to commence as also the fact that the Petitioner being an influential person in the society has the capability of putting the victim under pressure and of influencing the trial thereby, I am not inclined to allow the prayer for bail at this stage. The bail application is, therefore, rejected. However, it is open to the

Petitioner to renew his prayer after examination of the informant and victim during trial.

AKB

(Sashikanta Mishra)
Judge

