

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.366 of 2022

Balakrushna Mahapatra @ Kabuli. Appellant

-versus-

State of Odisha & others. Respondents

CORAM: JUSTICE S.PUJAHARI

ORDER
27.07.2022

Order No.

- 04.
1. This matter is taken up through Hybrid mode.
 2. This appeal has been preferred against the order dated 12.04.2022 passed by the learned Adhoc Addl. Sessions Judge (Fast Track Special Court), Kalahandi, Bhawanipatna in C.T. No.73 of 2018 refusing to release the appellant on bail.
 3. Heard the learned counsel for the appellant and the learned counsel for the State.
 4. As it appears, the appellant being indicted in a heinous and serious offence under Sections 354-A, 354-D, 376(2)(f)(n), 376(3) of IPC, Section 6 of the POCSO Act and Sections 3(1)(r)(s) and 3(2)(v)(va) of the SC & ST (PoA) Act and being in custody has approached this Court for bail.

5. Mr. Panda, learned counsel for the appellant submits that since the material witnesses, i.e., victim as well as her parents have been examined and the trial has not been concluded, yet due to non-production of the other witnesses though the appellant is in incarceration for more than three years and two months, he may be released on bail on such terms and conditions as the Court may deem just and proper, inasmuch as he being a permanent resident of Bhawanipatna town has least chance of absconding, more so in view of the law laid down in the case of *Hussainara Khatoon v State of Bihar*, reported in (1980) 1 SCC 98.

6. Learned counsel for the State on the other hand though opposes the prayer for bail of the appellant being indicted in heinous and serious offence, but does not dispute that for non-production of the most of the material witnesses, the trial is not concluded, so also it is not disputed that the appellant earlier released on interim bail has surrendered to the custody of the Court on the date fixed and not misutilized the liberty granted to him.

7. It is true that the appellant in this case has been incarcerated in a heinous and serious offence and the heinousness and seriousness is one of the primary factors for consideration of grant of bail, coupled with the fact that tampering with the evidence and also chance of absconding of the accused. However, a person indicted in a case is also

entitled to a speedy trial and the speedy trial is a fundamental right of the accused is well settled, more so in respect of incarcerated persons facing trial.

8. Considering all these aspects, though the appellant has been indicted in a heinous and serious offence and his prayer for bail was rejected earlier, even if I am not inclined to release the appellant on bail, but taking note of long period of incarceration and the victim as well as her parents have been examined in this case, the appellant is allowed to be released on interim bail for a period of 90(ninety) days from the date of his release or disposal of the case, whichever is earlier on such terms and conditions as the Court in seisin over the matter may think it just and proper including the conditions that the appellant shall cooperate with the trial and he shall record his presence before Bhawanipatna Town Police Station twice in a week, i.e., every Wednesday and Sunday between 4 P.M. and 5 P.M., he shall not indulge in any criminal activity and he shall not extend any threat to the victim or her family members in any manner, so also he shall cooperate with the trial. Violations of any of the conditions imposed shall entail cancellation of the interim bail granted pursuant to this order without further reference to this Court by the trial Court.

9. Furthermore, the trial Court is directed to make an effort to conclude the trial of the aforesaid case within six months from the date of receipt of a copy of this order. If the

trial is not concluded within the period stipulated, the appellant may renew his prayer, but he must surrender to custody on 91st day of his release.

10. With the aforesaid order, this CRLA stands disposed of.

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

MRS



(S. Pujahari)
Judge