

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.4962 of 2022

Kabu Biswal @ Ranjit Biswal ***Petitioner***
Mr. S.R. Mohapatra, Advocate

-versus-

State of Orissa ***Opp. Party***
Mr. P.K. Pattnaik, AGA
Mr. S. Satapathy, Adv.(Informant)

CORAM:
JUSTICE G. SATAPATHY

ORDER
08.12.2022

Order No.

- 04.
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 Special G.R. Case No.18 of 2022 arising out of Paradeep P.S. Case No.47 of 2022 pending in the file of learned Additional Sessions Judge-Cum-Special Judge, Jagatsinghpur for commission of offences punishable under Sections 363/366-A/368/376(3) of IPC read with Section 4/6 of POCSO Act, on the allegation of kidnapping the victim and taking away her to a far off place in Punjab and committing aggravated penetrative sexual assault upon her.
 3. In the course of hearing of the bail application, Mr. S.R. Mohapatra, learned counsel for the petitioner by placing the statement of the victim submits that the petitioner has never kidnapped the victim, rather the victim has forcibly and voluntarily joined the petitioner and persuaded the petitioner to take her to Punjab. It is further submitted by

him that the victim is aged about seventeen years and in her statement she had expressed her desire to marry the petitioner and, at no point of time, the victim has stated against the petitioner for forcibly committing sexual intercourse upon her and the petitioner having detained in custody since 30.04.2022, may kindly be released on bail.

4. On the other hand, Mr. S. Satapathy, learned counsel for the informant strongly opposes the bail application of the petitioner and he inter alia submits that the victim was aged about less than sixteen years at the relevant time of occurrence and consent of such victim is no consent under law and the petitioner having found to have committed offence of sexual assault upon the victim earlier does not deserve to be released on bail.

5. Mr. P.K. Pattnaik, learned A.G.A. echoing the submission of the learned counsel for the informant submits that the victim being aged about less than sixteen years, her consent cannot be treated as a valid consent and, thereby, the petitioner having committed the offence upon the victim should not be enlarged on bail.

6. Considering the rival submissions made, taking into consideration the nature and gravity of the accusations raised against the petitioner as also the surrounding circumstance including the statement of the victim and keeping in view the pre trial detention of the petitioner since 30.04.2022 and charge-sheet having already been submitted in this case and further the fact that the object of bail is neither punitive nor preventive and the principle that bail is the rule but jail is the exception and taking into consideration the other circumstance on record in entirety, this Court admits the petitioner to bail.

7. 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.50,000/- (Fifty 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 and that the petitioner shall report attendance before the Astaranga Police Station once in a week for six months preferably on Monday in between 12 Noon to 1 PM. The I.I.C. of the Astaranga Police Station shall not detain the petitioner unnecessarily after recording his attendance beyond the time as stipulated. Further, it is directed that the petitioner shall not visit to the house or nearby area of the house of the victim as also the school premises of the victim while on bail.

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.

8. Accordingly, the BLAPL stands disposed of.
9. Issue urgent certified copy of the order as per Rules.

(G. Satapathy)
Judge