

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.6934 of 2022

Sushil Chandra Jena

....

Petitioner

Mr. Sarada Prasad Dash, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. Shashanka Patra, A.S.C.

CORAM:

JUSTICE A.K.MOHAPATRA

ORDER

19.10.2022

Order No.

05. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner and learned Addl. Standing Counsel for the State.
3. This is an application under Section 438, Cr.P.C. filed by the Petitioner for anticipatory bail, involving offence punishable under Sections 417/506/34, I.P.C.
4. It is submitted by learned counsel for the Petitioner that the present petitioner and the victim girl had consented sexual relationship over the years. On perusal of the 161, Cr.P.C. statement of the victim girl it appears that, she has stated that since 2010 she had love relationship with the present petitioner. Although the petitioner promised to marry her and thereafter she kept physical relationship with the petitioner, but nowhere she has alleged that the petitioner had committed any sexual act against her will or consent. Further, on verification of the record, it appears that the victim girl is

aged about 28 years at the time of lodging of F.I.R. in the year 2017. Therefore, at the time of the occurrence took place, she was aged about 24 years and therefore she was a major then.

It is further submitted by learned counsel for the petitioner that, since the marriage could not take place, this F.I.R. has been lodged falsely implicating the present Petitioner. The F.I.R. also reveals that the Informant has also named the family members of the present petitioner for causing delay in the marriage. Learned counsel for the Petitioner further submits that in the meantime the victim girl has already married elsewhere and she is living peacefully by leading happy conjugal life.

5. Learned counsel for the State on the other hand opposes the bail of the Petitioner, stating that the Petitioner although had promised to marry the victim girl and on that basis kept physical relationship, however subsequently he did not marry the victim. Therefore, the Petitioner should not be enlarged on bail.

6. However, this Court, on perusal of the records, found that both Petitioner and the victim were major at the time of the alleged occurrence took place.

7. Having heard learned counsels for the parties and upon a careful consideration of the facts and circumstances of the present case, and further taking into consideration the fact that at the time of occurrence took place, both Petitioner and the victim girl were major and consenting, although this Court is not inclined to grant anticipatory bail to the Petitioner, however it is observed that, in the event the Petitioner surrenders and moves for bail before the learned S.D.J.M., Rayagada in G.R. Case No.465 of 2017 corresponding to

Rayagada P.S. Case No.218 of 2017 within a period of three weeks from today, he shall be released on bail on such terms and conditions as the learned Magistrate may deem just and proper in the facts and circumstances of the case.

However, while imposing conditions for bail, learned Magistrate shall also impose the following additional conditions –

- (i) The Petitioner shall not threaten, terrorise, ill-treat or harass the Informant and her family members including the prosecution witnesses in any manner whatsoever.
- (ii) He shall not try to tamper with the prosecution evidence in any manner, while on bail; and
- (iii) He shall appear before the learned trial court on each date fixed for trial, without fail.

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

8. The ABLAPL is disposed of accordingly.
9. Urgent certified copy of this order be granted as per rules.

(A.K. Mohapatra)
Judge

S.K.Parida