

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL NO.5568 OF 2022

Gandhi Badaik

.... ***Petitioner***
Mr. R.N. Parija, Advocate

-versus-

State of Odisha & Another

.... ***Opposite Party***
Mr.S.K.Nayak, AGA.

CORAM:
MR. JUSTICE D.DASH

ORDER
13.09.2022

Order No.

01. 1. This matter is taken up by through hybrid arrangement (virtual/physical) mode.
2. Learned Counsel for the Petitioner files a Memo along with the certified copies of the summons and the depositions in Court today, which are taken on record.
3. This is the successive journey of the Petitioner, who is in custody in connection with Rajgangpur P.S. Case No.162 of 2015 corresponding to S.T. Case No.11 of 2016 pending on the file of learned Sessions Judge, Sundargarh, running for the alleged commission of offence under section-450/376(D) of the IPC, in filing this application under section 439 of the Cr.P.C., for reconsideration of the prayer for grant of bail to the Petitioner in the above mentioned case.
4. Learned Counsel for the Petitioner submits that the Petitioner being arrested in the case is in custody since 10.08.2015. He further submits that despite issuance of summons on several occasions to the victim, it has not yet been

possible to bring her to witness box for recording her evidence and she is not traceable as per the report of the Process Server. He further submits that sister of the victim having been examined in the case has turned hostile. Inviting the attention of this Court, FIR as well as the statement of the victim recorded under Section-161 of the Cr.P.C., it is submitted that the victim in the F.I.R. having specifically implicated the Petitioner in commission of the crime has not so stated in her subsequently. According to him, shakes the foundation of the prosecution case as against the Petitioner. In view of all these above, when there remains no scope on the part of the Petitioner to flee from justice and the question of tampering the evidence does not arise; he urges for reconsideration of the prayer for grant of bail to the Petitioner on such terms and conditions as deemed just and proper.

5. Learned counsel for the State opposes the move citing the role of the Petitioner as stated F.I.R. He however does not dispute the position that the Petitioner being in custody since 10.08.2015, the trial is yet to conclude as despite all the attempts the victim has not yet been traced out.

6. Taking into account the submissions made; further keeping in view the materials on records as well as other surrounding circumstances including the long period of detention of the Petitioner in custody; while being inclined to reconsider the prayer for grant bail to the Petitioner in the aforesaid case, it is directed that the Petitioner be released on bail in the aforesaid case on such terms and conditions as

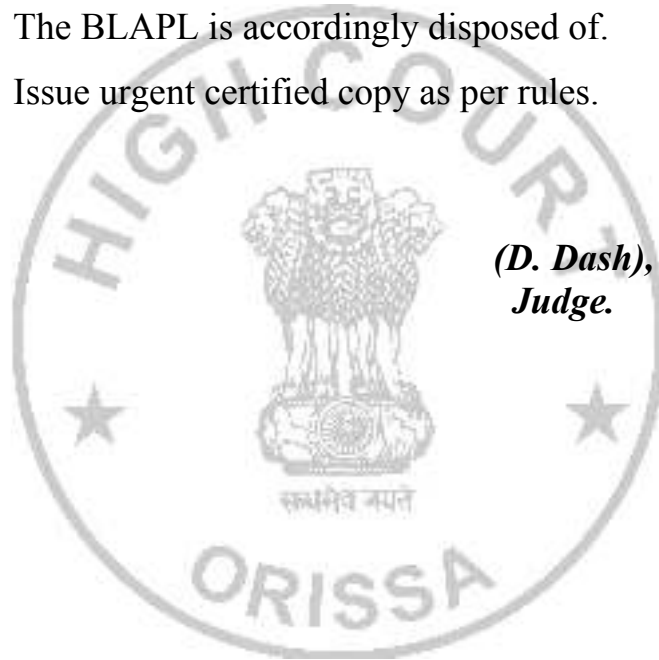
deemed just and proper by the Court in seisin of the case with further conditions that:-

1. Petitioner will appear in person before the Court in seisin of the case on each date of posting of the case till conclusion of the trial;
2. will not threaten or terrorize the prosecution witnesses including the victim in any manner.

Violation of any of the condition(s) shall entail cancellation of bail.

7. The BLAPL is accordingly disposed of.
Issue urgent certified copy as per rules.

Narayan



**(D. Dash),
Judge.**