

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.301 of 2021

Ananta Swain *Appellant*
Mr. S.K. Jena, Advocate
-versus-
State of Odisha *Respondent*
Mr. M.K. Mohanty, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER
10.05.2022

Order No.

10. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. This is an appeal under Section 14-A of Schedule Caste and Scheduled Tribe Act.
3. The present appeal is directed against the order dated 12.02.2021 passed by the learned Additional District and Sessions Judge, Chatrapur in G.R. No.13 of 2018 arising out of Kodala P.S. Case No.95 of 2018 for alleged commission of offence under Section 376-D, I.P.C. read with Section 3(1)(x)/3(2)(v) of the S.C. and S.T. (PA) Act.
4. Heard learned counsel for the Appellants as well as learned Additional Standing Counsel for the State-Respondent.
5. The case of the prosecution, in brief, is that one Radha Das lodged a written report before the I.I.C., Kodala Police Station stating therein that on 08.05.2018 at about 4.00 A.M. while she was sleeping on the Varandah opening the door due to summer. In the meantime, the present petitioner along with one Mithun Sahu entered inside her house,

Mithun Sahu put a cloth inside her mouth and caught told her. The present petitioner undressed her and sexually assaulted. In spite of her protest he tried to escape from the clutches of the accused person, but could not able to succeed. While Mithun Sahu attempted to commit sexual assault, the informant could manage to bring out the cloth from her mouth and shouted. Hearing the shouting, the villagers and relatives arrived at the spot and caught hold the present petitioner. After some time said Mithun Sahu, who managed to escape from the spot arrived with his associates and threatened the informant to see dire consequence aspiring the caste of the informant as 'Bauri' and took away the petitioner forcefully. Hence, this case.

6. It is submitted by learned counsel for the Appellant that the Appellant is in custody since 16.09.2020. In the meantime, investigation has been concluded and charge-sheet has been submitted. He further submits that the main accused, namely, Mithun Sahu, who committed rape on the victim and the present petitioner was with him and that he has not committed any sexual act on the victim.

7. Further learned counsel for the appellant submits that there is contraction in her statements recorded under Section 161, Cr.P.C. as well as Section 164, Cr.P.C. wherein she stated that the petitioner along with another person, namely, Mithun Sahu, who forcibly entered into the house and committed rape on her. It is also submitted by learned counsel for the appellant that the main accused, namely, Mithun Sahu has already been released on bail.

8. As per medical examination report, there is no sign or symptom of recent sexual intercourse and no injury was found on the body of the victim.

9. Learned counsel for the appellant submits that there was previous dispute between the two families and the petitioner is a young boy aged about 22 years and that he has been falsely implicated in this

case. He further submits that there is no scope for absconding or fleeing away from the hands of the justice, as the Appellants are permanent residents of the locality.

10. Learned counsel for the State-Respondent, on the other hand, submits that the allegation made against the Appellant is serious in nature. He further submits that considering the gravity of offence, the prayer for bail at the behest of the appellant may be rejected.

11. In reply to the aforesaid submission, learned counsel for the appellant submits that the statement of the victim recorded under Section 164, Cr.P.C. after three years of the incident. Therefore, the same does not have any sanctity in the eye of law.

12. Having heard learned counsels for the parties and considering the nature of accusation, seriousness and the gravity of offence as well as custodial detention of the Appellant, I am inclined to release the Appellant on bail. Accordingly, the impugned order dated 12.02.2021 passed in CRLA No.301 of 2022 is hereby set aside.

13. Let the Appellant be released on bail in the aforesaid case subject to furnishing a bail bond of Rs.50,000/-(rupees fifty thousand) with two local sureties each for the like amount to the satisfaction of the learned court in seisin over the matter with further conditions as may deem just and proper by the learned court in seisin over the matter in the facts and circumstances of the present case.

14. With the aforesaid observation, the Appeal is allowed without any cost.

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

(A.K. Mohapatra)
Judge