

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.5122 of 2021

Bimal Kanhar

.... ***Petitioner***
Mr. S. Dwibedi, Advocate

-versus-

State of Orissa and another

.... ***Opp. Parties***
Mr. P.K. Pattnaik, A.G.A.

BLAPL No.5123 of 2021

Satrughana Kanhar

.... ***Petitioner***
Mr. S. Dwibedi, Advocate

-versus-

State of Orissa and another

.... ***Opp. Parties***
Mr. P.K. Pattnaik, A.G.A.

**CORAM:
JUSTICE G. SATAPATHY**

ORDER
29.09.2022

Order No.

BLAPL No.5122 of 2021 & BLAPL No.5123 of 2021

- 06.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. Since these two bail applications of the petitioner Bimal Kanhar in BLAPL No.5122 of 2021 and the petitioner Satrughana Kanhar in BLAPL No.5123 of 2021 arise out of one and same case, and the learned counsel for the petitioners in both the cases being one and same, they are heard together and disposed of by this common order.
 3. These are applications U/S. 439 of Cr.P.C. by the petitioners

for grant of bail in connection with Gochhapada P.S. Case No.28 of 2021 corresponding to C.T. Case No.23 of 2021 pending in the Court of learned Additional Sessions Judge-Cum-Special Court under POCSO Act, Phulbani for commission of offences punishable under Sections 450/394/363/376-D/376(3)/506/34 of I.P.C. read with Section 6 of the POCSO Act on the allegation that on the fateful night of occurrence, the petitioners and two others forcefully trespassed into the house of the informant and committed theft of property and valuables by tying the informant and his wife with ropes and while going back, they kidnapped the two minor victims and took away them to jungle and gang raped as well as committed aggravated penetrative sexual assault upon the two victims who are subsequently rescued by the informant and his villagers from jungle but the petitioners and other accused persons fled away from the spot.

4. In the course of hearing these bail applications, Mr. Suryakanta Dwibedi, learned counsel for the petitioners in both the bail applications submits that the informant has committed murder of one of the friend of the petitioners and accordingly, Gochhapada P.S. Case No.27 of 2021 has been registered against the informant of this case and others, and in order to get rid of the said criminal case, the informant of the present case has set up the victims to bring allegations of gang rape and aggravated penetrative sexual assault against the petitioners who are innocent of any offence but the petitioners are languishing inside jail custody for more than one and half years without any fault. It is also submitted that the informant of the present case is an accused in Gochhapada P.S. Case No.27 of 2021 for offence U/S 302 of I.P.C. but the present case being Gochhapada P.S. Case No.28 of 2021 is subsequent to the earlier P.S.

Case No. 27 of 2021 which by itself belies the allegations against the petitioners for committing gang rape and aggravated penetrative sexual assault upon the victims. It is also submitted that the identification of the petitioners in the T.I. parade has no sanctity because the victims were allowed to see the petitioners at the time of the medication examination of the victims and the petitioners together just one month prior to the conduct of such T.I. parade. Learned counsel for the petitioners under aforesaid submissions prays to grant bail to the petitioners.

5. On contrary, learned counsel for the State, however, vehemently opposes the bail application of the petitioners and inter alia submits by placing the statements of the victims that the petitioners are responsible for committing gang rape upon the victims. It is also submitted that these two petitioners along with other two co-accused persons had allegedly committed theft in the house of the informant and out of the petitioners and accomplices, two each of them committed rape upon one victim each in a jungle by kidnapping them and the story put forth by the petitioners for murder of their friend is only with a purpose to screen themselves from the punishment in this case and the present petitioners having prima facie found involved in committing gang rape and aggravated penetrative sexual assault upon the victims should not be released on bail.

6. After having considered the rival submissions advanced on behalf of the parties upon perusal of the record, there appears allegations against the petitioners for committing trespass into the house of the informant in the dead of the night, committing theft as well as kidnapping the two victims and finally committing gang rape

and aggravated penetrative sexual assault upon them. It is no doubt advanced on behalf of the petitioners that the informant of the present case in order to get rid of the criminal case of the murder of one of the co-accused of the present case has set up this criminal case with help of the victims but such submissions appears to be insignificant and pre-mature unless such allegations are substantiated by way of cogent and reliable materials. Further, even if for a moment the above assertion is taken into consideration, it cannot be said that there is no prima facie case against the petitioners, especially when the statement of the victims disclose serious allegations against the petitioners for gang rape and aggravated penetrative sexual assault. Besides, the identification of the petitioners by the victims in T.I. parade has not been seriously disputed by the learned counsel for the petitioners, but he has only challenged the sanctity of such T.I. parade by submitting that the victims were allowed to see the petitioners at the time of their medical examination with the petitioners around one month prior to the conduct of T.I. parade and in absence of any cogent and reliable material to evidence the same, such contentions advanced for the petitioners appear to be mere submission only for the purpose of getting the benefit for grant of bail.

7. In view of the above facts and discussions and taking into consideration the allegations raised against the petitioners by the victims and the fact of alleged identification of the petitioners in T.I. parade and regard being had to the age of the victims and the nature and character of supporting materials to the allegation, this Court is not inclined to grant bail to the petitioners. Hence, the prayer for bail of the petitioners stand rejected.

8. Learned trial Court is requested to expedite the trial in terms of the request made by learned counsel for the petitioners.

9. Accordingly the prayer for bail of the petitioner Bimal Kanhar in BLAPL No.5122 of 2021 and the petitioner Satrughana Kanhar in BLAPL No.5123 of 2021 are hereby rejected and both the bail applications are accordingly disposed of.

10. Issue urgent certified copy of the order as per Rules.

Kishore

