

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.341 of 2021

Kartika Behera

.... Appellant
Mr.S.K.Pattnaik, Advocate

-versus-

State of Odisha &another

.... Respondents
Mr.P.C.Das, A.S.C.
Mr.K.Mohanty, Advocate for R-2.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

12.04.2022

Order No.

13.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the appellant as well as learned Additional Standing Counsel for the State.
3. On 05.04.2022 the victim appeared through virtual mode and has raised her objection to grant bail to the present appellant. The victim also represented through counsel Mr.K.Mohanty, who is present in court.
4. Perused the case record, statements of the witnesses as well as the medical examination report of the victim.
5. The present appeal has been directed against the order dated 23.06.2021 passed by the Special Judge, Champua in Spl.Case No.8/21 rejecting the bail application of the appellant.
6. The prosecution case as revealed from the F.I.R. in short is that on 09.03.2021 the informant Malli Purty, daughter of Neheru Purty at Naradapur filed an F.I.R. before the I.I.C., Champua Police

Station alleging that she had married with one Ghanashyam Munda. But due to dispute she left her first husband. To maintain the study of his son, she worked in a Nurish Health Project, Keonjhar where she had developed her love relationship with the appellant, who is a driver of a Bus. But on 19.12.2020 giving assurance of marriage, he forcibly made physical relationship with her. Thereafter many time he kept physical relationship with her. So she became pregnant of three months. It is also alleged in the F.I.R. that on 03.03.2021 the informant went to the house of the appellant, where his mother abused her in filthy languages aspersing her caste and assaulted.

7. It is submitted by the learned counsel for the appellant that the appellant is in custody since 13.06.2021. In the meantime investigation has been concluded and final charge sheet has been filed by the Police. It is submitted by the learned counsel for the appellant that the appellant is aged about 24 years and the victim is aged about 26 years and a married lady and having a male child. It is further submitted by the learned counsel for the appellant that the appellant as well as the victim had relationship since long and accordingly they had sexual encounter on many occasions by consent of both sides. It is further submitted by the learned counsel for the appellant that the victim insisted to marry the appellant and the same was not materialised for which the victim lodged F.I.R. making allegations against the appellant. It is further submitted by the learned counsel for the appellant that the medical examination report of the victim does not support her version. The appellant is a permanent resident of the locality and working as Bus driver and looking after the family. It is also the submission of the learned counsel for the appellant that in the event this Court releases the appellant on bail, the appellant shall abide any terms and conditions

that may be imposed by this Court and shall appear before the trial court on each and every date.

8. It is submitted by the learned Additional Standing Counsel on the other hand opposes the prayer for bail on the ground that the allegations made in the F.I.R. as well as statement of the victim recorded under section 164 Cr.P.C. contained serious allegations and case under section 376 of the Indian Penal Code has been made out against the appellant. However, he does not dispute the fact of sexual relationship with the appellant and the victim. He further submits that since preliminary charge sheet has been filed keeping the investigation open, the appellant may not be released at this juncture as the same still affect the investigation.

8. Learned counsel for the informant submits that the victim is a poor and helpless lady and she may be provided with some compensation. It is further submitted by the learned counsel for the informant that the appellant convinced the victim to have physical relationship making promise to marry her. However, he does not dispute the fact that the relation is consensus and the victim is a married lady having a male child.. Learned counsel for the informant further reiterated the apprehension expressed by the victim that in the event the appellant is released on bail he may kill the victim. On such ground, learned counsel for the informant prays for rejection of bail application of the appellant.

9. Having heard the contentions raised by the respective parties and considering the surrounding facts and circumstances and the fact that the appellant is in custody since 13.06.2021 and that the preliminary charge sheet has been filed in the meantime and although several months have been elapsed in the in the meantime and as a result of which trial may not commence in near future, this

Court is inclined to release the appellant on bail subject to furnishing a bail bond of Rs.30,000/- (Rupees Thirty thousand) with two solve sureties each for the like amount to the satisfaction of the court in seisin over the matter. The bail order granted hereby further subject to the following conditions:

- i) the appellant shall not indulge himself in any similar nature of offence.
- ii) shall appear before the trial court on each and every date fixed by the trial court till conclusion of trial.
- iii) shall not tamper with the prosecution evidence.
- iv) shall not threaten, influence or terrorise any prosecution witnesses while on bail.
- v) he shall not make any attempt or threaten the victim in any manner. In the event the victim made any complaint before the Police, it is open for the trial court to issue fresh NBW against the appellant and take the appellant back to custody. In such event this order shall stand revoked.
- vi) Violation of any of the terms and conditions shall entail cancellation of bail.

10. On the submission of the learned counsel for the informant with regard to payment of compensation to the victim in this case, this Court is of the considered view that it is open for the victim to move an application under the Victim Compensation Scheme before the District Legal Service Authority. In the event such an application is moved at the instance of the victim, the same shall be considered in accordance with the provisions of the said scheme and suitable compensation as permissible under the Scheme be paid to the victim by the concerned authority. Further it is needless to mention here that the trial Court has also ample power to grant compensation under the provisions of rehabilitation.

11. Accordingly the impugned order 23.06.2021 passed by the learned Special Judge, Champua in Spl.Case No.8 of 2021 is hereby set aside and the appeal is allowed subject to the aforesaid direction.

12. The CRLA is accordingly disposed of.

13. Issue urgent certified copy as per Rules.

RKS

(*A.K. Mohapatra*)
Judge

