

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.344 of 2021

Dibya Ranjan Sahu

.... ***Appellant***
Mr. N. Panda, Advocate

-versus-

State of Odisha and another

.... ***Respondents***
Mr. M.K. Mohanty, A.S.C.
Mr. S.K. Joshi, Advocate for the
Respondent No.2

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER
29.03.2022

Order No.

06.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. This is an application under Section 14-A(2) of the S.C. and S.T. (PoA) Act.
3. Heard learned counsel for the Appellant, learned counsel for the Respondent-2 and leaned counsel for the State-Respondent.
4. The present appeal is directed against the order dated 06.07.2021 passed by the learned Additional Sessions Judge-cum-Special Judge, Athamallik in C.T. Special Case No.07 of 2021 arising out of Thakurgarh P.S. Case No.55 of 2021, which was registered for commission of alleged offence under Sections 376(2)(n)/417/493, I.P.C. read with Section 3(1)(w)(i)/3(2)(va) of the S.C. and S.T. (PoA) Act.
5. Perused the case record, statement of the witnesses, statement

of the victim recorded under Section 164, Cr.P.C. as well as other relevant materials.

6. The prosecution story as per the F.I.R. lodged by the informant reveals that on 28.02.2021 a written report that on dated 19.02.2021 at about 9.00 P.M. the present petitioner entered back side of the house of the informant at that time the informant was present there and the petitioner caught hold the informant back side and laid down her on the ground and forcibly committed rape to the informant. Informant tried to shout, the present petitioner closed the mouth of the informant by means of hand. The petitioner assured to marry the informant. On the same night, they fled away from their house to Bargarh by a bus. The petitioner kept her like his wife in a rented house. After getting a phone call from the house of the petitioner, the petitioner quarreled with her and on 23.02.2021 night petitioner went away from the spot leaving her alone. Informant went to the Bargarh Town Police Station to lodge an F.I.R. but as per their advice, the informant lodged an F.I.R. before the Thakurgarh Police Station. Accordingly, she informed the police and F.I.R. has been lodged against the present petitioner.

7. Learned counsel for the Appellant submits that the petitioner is in custody since February, 2021 and he further submits that investigation is concluded and charge-sheet has been submitted by the police.

8. Further, learned counsel for the petitioner submits that the petitioner as well as the victim had intimate relationship since last two years and both were ready and willing to marry each other and accordingly, with the consent of both the sides, they kept physical

relationship. However, due to the caste dispute between the families, a false F.I.R. has been lodged against the petitioner. It is also submitted that the victim is a major girl and referring to the statement of the victim recorded under Section 164 of the Cr.P.C. and as per medical examination report of the victim, there is no sign or symptom of recent sexual intercourse and that there is no scope for absconding or fleeing away from the hands of the justice, as the petitioner is permanent resident of the locality. In the event the petitioner shall be released on bail, he shall cooperate with the trial court on each date fixed.

9. Learned counsel for the State contended that the alleged crime is heinous in nature and as such, no leniency should be shown to the accused. He further submits that although the victim had admitted about the love affair between the victim and the accused, the same does not give any right to the accused to have a sexual relationship with the victim against her will as alleged by her. It is also submitted that there was a dispute between the two families.

10. Learned counsel for the Respondent No.2 does not dispute the fact that the victim has love relationship with the petitioner. However, he submits that the petitioner had given false promise to marry the victim and thereafter refused to marry her.

11. Further upon scrutiny of the rejection order, it is found that the learned court below has rejected the bail application of the Appellant mainly on the ground of the medical examination report and the accused kept sexual relationship with the victim without her consent. Upon the scrutiny of the F.I.R., this Court is of the considered view that the victim and the Appellant were in a love relationship for quite

some time before the occurrence. Since the marriage did not materialized, the victim/Respondent No.2 had lodged this F.I.R. alleging that despite promise to marry her the accused/Appellant sexually exploited her and thereafter he refused to marry her. Considering the grievance of the victim/Respondent No.2 such a plea is improbable at this stage and the said evidence can only be considered during trial of the case.

12. Considering the aforesaid facts and the nature of allegations made by the informant as well as age of both the victim/Respondent No.2 as well as accused/Appellant, this Court is inclined to allow this appeal by setting aside the rejection order dated 06.07.2021 passed by the learned Additional Sessions Judge-cum-Special Judge, Athamallik C.T. Special Case No.07 of 2021.

13. Hence, let the Appellant be released on bail by furnishing a bail bond of Rs.30,000/- (rupees thirty thousand) with two local solvent sureties each for the like amount to the satisfaction of the learned court in seisin over the matter subject to the following conditions that:-

- I. The Appellant shall not tamper with the prosecution evidence or shall not try to threaten or influence the witnesses, victim and her family members in any manner whatsoever while on bail;
- II. While on bail, he shall not make any attempt to come in contact with the victim;
- III. He shall not make any default in attending the court during trial on each date;

Violation of any of the terms and conditions of bail, shall entail cancellation of the same.

14. It is made clear that any observation made herein is confined to this bail order only. The court below is directed to proceed with the trial without being influenced by the observation made in this order or any other factor.

15. With the aforesaid observation, the CRLA is disposed of.

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

Jagabandhu

