

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.6100 of 2021

Linkan @ Samerendra Jagdev

.... ***Petitioner***
Mr. S.R. Mulia, *Advocate*

-versus-

State of Odisha

.... ***Opp. Party***
Mr. P.C. Das,
learned Additional Standing Counsel.
Mr. Saryabrata Mohanty, Advocate for
Informant

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

05.01.2022

Order No.

08.

1. This matter is taken up through Hybrid Arrangement (Video Conferencing/Physical Mode).
2. This is an application under Section 439 of the Criminal Procedure Code.
3. The Petitioner is an accused in G.R. No.402 of 2021 on the file of learned J.M.F.C., Aul facing trial for the offence punishable under Sections 376(2)(n)/323/294/379/307/506 of the I.P.C.
4. The case of the prosecution, in short, is that, it is alleged that the elder sister of the accused-Petitioner has married in the village of the in-laws house of the victim and he used to visit his sister's house frequently and thereby developed relation with the husband of the informant. The accused-Petitioner and husband of the informant started partnership business and in connection with the business, the accused-Petitioner used to come to the house of the victim. One day

taking advantage of absence of her husband, the accused gave intoxicated drink to the victim and kept physical relationship with her and took video clippings of sexual act. Thereafter, the accused-petitioner blackmail the victim, threatened to take away life of her husband and her son and to make it viral and used to keep physical relationship with the victim. The accused also took the victim to Bhubaneswar kept her in a rented house, committed sexual intercourse, as a result of which the victim became pregnant and gave birth to a male child. It is further alleged that the accused also attempted to kill her by pressing her neck and on 25.06.2021, the accused took away gold ornaments of the victim.

5. Heard Mr. S.K. Dash, learned counsel for the Petitioner and Mr. K.K. Nayak, learned counsel for the State.

6. Learned counsel for the Petitioner submits that the victim is a major girl and since several months the Petitioner and victim developed intimacy, they had consensual sexual relationship. Out of such relationship, a male child was born. As such the petitioner has not committed any crime punishable under Section 376, I.P.C.

7. Mr. P.C. Das, learned counsel appearing for the State vehemently opposed the prayer for grant of bail to the Petitioner.

8. Perused the F.I.R., Case Diary as well as relevant documents produced before this Court from either side.

9. On perusal of records, it is found that D.N.A. test was conducted by the police. A copy of such test report has been filed in this case which confirms that the Petitioner is the biological father of the child.

10. While the bail application was pending before this Court, the informant-victim filed an affidavit dated 20.12.2021 stating therein that she had love affair with the Petitioner and due to some misunderstanding, he had lodged this F.I.R. and that the Petitioner never raped her rather she had kept physical relationship with the Petitioner willingly and that the matter has been resolved at the intervention of well wishers of the family.

11. This Court by order dated 23.12.2021 directed that a copy of the affidavit so filed be forwarded to the Inspector-in-Charge of Aul Police Station, who shall ascertain about the correctness of the affidavit from the victim and a report be submitted to the learned counsel for the State by the next date.

12. On being asked, learned counsel for the State produced a letter written by one S.K. Pradhan, Inspector-in-Charge, Aul Police Station wherein he has stated that the victim was summoned to the police station and on being asked, she disclosed that the affidavit which has been submitted before this Court was in fact prepared and submitted by her without any pressure/threat from either side. It is also submitted that the victim is aged about 35 years old and after completion of investigation, charge sheet has already been submitted in this case.

13. Having heard learned counsel for the parties and going through the materials available on records, I am inclined to release the Petitioner on bail, it is directed that let the Petitioner be released on bail by furnishing a bail bond of Rs.50,000/- (rupees fifty thousand) with one solvent surety for the like amount to the satisfaction of the learned court in seisin over the matter.

14. It is open for the court in seisin over the matter to impose such other conditions as may deem just and proper.

15. The Bail Application is accordingly allowed.

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

Jagabandhu

(A.K. Mohapatra)
Judge

