

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.468 of 2020

1. Binayak Behera

2. Mitu Mallik

....

Appellants

Mr. S.N. Mishra, Advocate

-versus-

1. State of Odisha

2. Smt. Rajani Behera

....

Respondents

Mr. J.P. Patra,

Addl. Standing Counsel

Mr. Sanjit Mishra, Advocate for
respondent no.2

CORAM:

JUSTICE S.K. SAHOO

ORDER

21.02.2022

Order No.

11.

This matter is taken up through Hybrid arrangement (video conferencing/physical mode).

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for respondent no.2.

This is an appeal under section 14-A of S.C. & S.T. (POA) Act, 1989 in connection with Special G.R. No.01 of 2020 arising out of Khallikote P.S. Case No.04 of 2020 pending in the Court of learned Additional Sessions Judge, Khallikote for offences punishable under sections 376-D/323/506 of the

Indian Penal Code read with section 25(1-B)(a) of the Arms Act and sections 3(1)(r)(s)(w)(i)/3(2)(va) of the S.C. & S.T. (PoA) Act.

The appellant moved an application for bail before the Court of learned Additional Sessions Judge, Khallikote which was rejected on 17.08.2020.

In pursuance of the order dated 07.10.2021 in which the learned counsel for the State wanted to obtain instruction from the victim on the affidavit filed by Mr. Sanjit Mishra, Advocate through the Inspector in-charge of Khallikote police station, Mr. J.P. Patra, learned Additional Standing Counsel today produced the letter dated 05.12.2021 of the Inspector in-charge of Khallikote police station in which it is mentioned that on that day, the victim appeared at the police station and presented a written report that though on 07.10.2021, she disagreed with the affidavit filed by Mr. Sanjit Mishra, Advocate but today, she stated that the body of the affidavit is true and her consent letter is also attached therewith.

In view of the contradictory statements made by the victim from time to time, it is not thought proper to give any importance at all to the affidavit filed by the victim relating to the amicable settlement of the dispute between the parties or that the appellants are no way involved in the alleged

commission of offences.

In view of the report furnished by the Inspector in-charge of Khallikote police station, there is no need for initiating any proceeding under the Contempt of Courts Act, 1971 against Mr. Sanjit Mishra, Advocate.

Learned counsel for the appellants submitted that the victim's accusation against the appellants in the first information report as well as in the 161 Cr.P.C. statement are contradictory and she seems to have fabricated a case against the appellants and though in the first information report, she has alleged that all the accused persons committed rape on her but in the 161 Cr.P.C. statement, she has alleged against two persons to have committed rape on her. It is further contended that the medical examination report of the victim does not corroborate to the accusation of rape on her and the appellants are in judicial custody since 18.01.2020 and therefore, the bail application of the appellants may be favourably considered.

Learned counsel for the State opposed the prayer for bail and placed the F.I.R. and the statement of the victim.

Considering the submissions made by the learned counsel for the respective parties, since it is a case of gang rape and the appellants have been

specifically named by the victim as the culprits whether in view of the contradictory statements made by the victim, her evidence is to be accepted or rejected is within the domain of the learned trial Court, which is adjudicated at the appropriate stage after the evidence is recorded and it is not in proper on my part to give any opinion on the same, which is likely to cause prejudice to the either of the parties.

In view of the nature and gravity of the accusation against the appellants, I am not inclined to release the appellants on bail. The prayer for bail of the appellants stands rejected.

The appellants are at liberty to renew their prayer for bail after examination of the victim in the trial Court.

Accordingly, the CRLA is disposed of.

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

(S.K. Sahoo)
Judge

RKM