

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.9204 of 2022

***Debenanda Behera @ Subash
Behera***

....

Petitioner

Mr. Byomakesh Tripathy, Advocate

-versus-

State of Odisha & another

....

Opposite Parties

Mr. Shashanka Patra, A.S.C.

CORAM:

JUSTICE A.K.MOHAPATRA

ORDER

17.10.2022

Order No.

03. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner and the learned counsel for the State.
3. The Petitioner has filed this application under Section 438, Cr.P.C. for anticipatory bail in the case involving offence under Section 376(2)(n), I.P.C. and Section 6 of the POCSO Act.
4. It is submitted by learned counsel for the Petitioner that the Petitioner and the victim girl had love relationship, as a result of which they had established physical relationship. It is further submitted that, in the meantime however the victim girl has already married to somebody else and she has been blessed with a child. He further submits that the victim girl was aged about 16 years at the time of occurrence, though now she has attained majority. Learned

counsel for the Petitioner further submits that this is a case of the year 2016 and in the meantime investigation has been complete and charge-sheet has been filed in the case. He therefore prays for release of the Petitioner on anticipatory bail.

5. Learned counsel for the State on the other hand, while opposing the bail of the Petitioner, submits that at the time of occurrence the victim girl was a minor and therefore offence under Section 6 of the POCSO Act has been added. He further submits that the consent of a minor is considered as “no consent” in the eye of law. Therefore, he submits that the Petitioner is liable to face the trial under the alleged offences punishable under the I.P.C. as well as POCSO Act.

6. However, considering the conspectus of the entire facts and circumstances of the present case and considering the fact that the F.I.R. is of the year 2016, seriousness of the allegation and gravity of the offence, I am not inclined to grant anticipatory bail to the Petitioner. However, the Petitioner is given liberty to surrender before the learned Addl. Sessions Judge-cum-Special Judge (POCSO), Phulbani in G.R. Case No.39 of 2016 corresponding to Phulbani P.S. Case No.87 of 2016 within three weeks from today. In the event of his surrender and motion for bail within the aforesaid period, learned Addl. Sessions Judge-cum-Special Judge (POCSO), Phulbani shall do well to dispose of the bail application of the petitioner on the same day on merit in accordance with law. The Case Diary be made available to the concerned court as quick as possible in order to facilitate in disposal of the bail application of the petitioner on the same day itself.

7. The ABLAPL is disposed of accordingly.
8. Urgent certified copy of this order be granted as per rules.

(A.K. Mohapatra)
Judge

S.K.Parida

