

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.6819 of 2021

Radhu Kullu

....

Petitioner

Mr.Byomokesh Sahoo, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. K.K. Nayak, A.S.C. for State

CORAM:

JUSTICE A.K.MOHAPATRA

ORDER

21.02.2022

Order No.

06. 1. Learned counsel for the State files copy of the DNA Test Report in Court today, which is taken on record.
2. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
3. Heard learned counsel for the Petitioner and learned counsel for the State. Perused the Case Dairy and DNA Examination Report dated 18.02.2022.
4. This is an application under Section 439 Cr.P.C. filed by the Petitioner for bail in connection with Dhauadhi P.S. Case No.67 of 2021, corresponding to G.R. Case No.704 of 2021, pending in the file of learned S.D.J.M., Sundargarh, for commission of alleged offences under Sections 376(2)(i)/376(2)(n) of I.P.C.
5. The prosecution story in brief is that the allegation made in the FIR is false and fabricated one. Petitioner is an innocent person and is aged about 64 years. Petitioner has been languishing in jail

custody since the date of his arrest, i.e. 2.7.2021. It is alleged in the FIR that one Mangulu Kullu lodged a written report before the police alleging therein that the present Petitioner had forcibly raped his sister, who is a mentally retarded and dumb girl, as a result of which, the victim girl became pregnant and it was found that she was 28 weeks pregnant. In the above context, a village meeting was held on 04.05.2021, wherein the victim pointed her fingers towards the Petitioner where the Petitioner admitted his guilt and also agreed to maintain the victim. When the Petitioner was asked to give the same in writing, Petitioner fled away from the spot. Finding no other alternative, the sister of the victim reported the matter to the Dharuadihi police station.

6. Learned counsel for the Petitioner submits that he has been falsely implicated in the case and such incident cannot be expected as because the victim is his niece and Petitioner is taking care of her from her childhood. Due to previous enmity with the villagers, the present case has been foisted against the Petitioner.

7. Learned counsel for the State vehemently opposes the bail of the Petitioner on the ground of the statement recorded under Section 164 Cr.P.C. of the victim girl and other witnesses. He further referred to the Medical Examination Report. The DNA Examination Report which was produced in Court today, pursuant to the direction of this Court dated 23.12.2021, passed in BLAPL No.6819 of 2019 and subsequent order dated 09.02.2022, passed in BLAPL No.6819 of 2021, reveals that 'the new born female child is the biological child of Sumitra Kullu but not the biological child of Radhu Kullu'

8. In such view of the matter, it is safely conclude that even though the victim became pregnant due to sexual intercourse, but the

Medical Report does not disclose the same against the Petitioner and declared that the Petitioner was not the father of the said new born female child. Anyway, such question is the matter of trial and this Court does not want to go into the trial of the case.

9. Having heard learned counsel for the parties, considering the nature and gravity of offences alleged, the period of detention of the Petitioner and the DNA Examination Report, this Court is inclined to release the Petitioner on bail on furnishing a bail bond of Rs.50,000/- (Rupees Fifty thousand) with one local surety for the like amount to the satisfaction of the learned court in seisin of the matter subject to following conditions:

- (i) He shall appear before the trial court on each and every date as fixed by the court;
- (ii) He shall not tamper with the prosecution evidence;
- (iii) He shall not influence or threaten any prosecution evidence and cooperate in the investigation;
- (iv) He shall not make any attempt to reach out or contact the victim girl in any way;
- (v) Violation of any of the above conditions shall entail cancellation of the bail.

10. With the above direction, the BLAPL stands allowed.

11. Issue urgent certified copy on proper application.

(A.K. Mohapatra)
Judge