

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 2208 of 2022

Subhadra Bhuyan

.... **Petitioner**
Mr. B.C.Panda , Advocate

-Versus-

State of Odisha

.... **Opposite Parties**
Mr. S.S. Mohapatra, ASC

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
21.09.2022

Order No.
01.

1. Heard learned counsel for the petitioner and learned ASC for the State.
2. Instant petition Section 482 of Cr.P.C. is filed by the petitioner assailing the impugned order dated 18th July, 2022 passed by the learned Additional District Judge-cum-Special Judge, Balasore in Special Case No. 327 of 2021 corresponding C.T. Case No. 801 of 2021 arising out of Khaira P.S. Case No. 208 of dated 27.09.2021 on the ground that is not tenable in law as the victim is the daughter of the petitioner was not handed over to the custody of her guardian.
3. In fact, after the disappearance of the victim, an F.I.R. was lodged and a case was registered as Khaira P.S. Case No. 363,354-B read with 34 IPC. For the self-same occurrence, the mother of the accused lodged an F.I.R. against the petitioner whereupon Khaira P.s. Case No. 208 of 2021 was registered under Sections 363 and 366 IPC.

The learned counsel for the petitioner submits that in the meantime, the victim-daughter of the petitioner was rescued but then, she was sent to a shelter home. It is submitted that the petitioner is the mother guardian and she is willing to take custody of her daughter and same may be directed on any terms and conditions as would be fixed by the Court.

4. Learned counsel for the State Mr. Mohapatra on the other hand submits that since the petitioner is an accused in connection with Khaira P.S. Case No. 208 of 2021 and therefore, the court below declined to handover the custody of the victim in her favour and hence, cannot be faulted with.

5. The Court perused the statement of the victim recorded under Section 161 Cr.P.C. and finds that she rather alleged ill-treatment at her in-laws house. At present the victim is aged about 18 years.

6. Learned counsel for the petitioner submits that the custody of the victim who is still at the shelter home and as her husband is absconding in view of the case registered pursuant to the lodging of the F.I.R. by the petitioner, necessary orders may be passed to hand over custody in favour of her mother guardian.

7. Having regard to the above facts and considering the submissions of the learned counsel for the respective parties, the Court is of the view that the learned court below without assigning any reason held that release of the custody of the victim in favour of the petitioner would not be safe in the peculiar facts of the present case and that too when there are F.I.R. and counter F.I.R. lodged by both the sides. The Court is of the view that at present the victim is in shelter home and it

would be proper to direct custody in favour of the petitioner, who is the mother guardian but subject to her willingness which would serve the purpose and meet the ends of justice.

8. Accordingly, it is ordered.

9. In the result, the CRLMC stands allowed. Consequently, the impugned order passed by the learned Special Judge, Balasore vide Annexure-5 is hereby set aside. Consequently, the learned court below is directed to ensure and record the willingness of the victim and considering the same and if she expresses intention to join the petitioner then to hand over her custody in favour of mother guardian subject to such conditions fixed as would be found proper in the facts and circumstances of the case.

10. An urgent certified copy of this order be issued as per rules.

(R.K. Pattanaik)
Judge