

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.408 of 2021

1. Smrutikant Rath
2. Sisir Kumar Rath
3. Sujata Rath **Appellants**

Mr.Devashis Panda, Advocate

-versus-

1. State of Odisha
2. Kum. Bhayashree
Laxmi Behera **Respondents**

Mr.Arupananda Das,
Addl. Government Advocate
Mr. H.B. Dash, Advocate (for
respondent no.2)

CORAM:
JUSTICE S.K. SAHOO

ORDER
19.09.2022

Order No.

07. This matter is taken up through Hybrid Arrangement (Video Conferencing/Physical Mode).

Heard learned counsel for the appellants and learned counsel for the State so also learned counsel for the informant.

This is an appeal under section 14-A(2) of S.C. & S.T. (PoA) Act, 1989 in connection with C.T. Case No.144 of 2020 arising out of Cuttack Sadar P.S. Case No.487 of 2020 pending in the Court of learned Presiding Officer, Special Court, SC/ST (PoA) Act, Cuttack wherein the appellants have challenged the order dated 12.04.2021 in taking cognizance

of offences punishable under sections 376(2)(n), 294/34 of the Indian Penal Code read with sections 3(1)(r)(s) and 3(2)(v) of the S.C. & S.T. (PoA) Act and issuance of process against them.

Learned counsel for the appellants submits that on a plain reading of the 164 Cr.P.C. statement of the victim, it would be clear that the victim was aged about twenty three years and she had not raised any objection when on number of occasions the appellant no.1 kept physical relationship with her and she is a consenting party and as such, the ingredients of the offence under section 376(2)(n) would not be attracted. He further submitted that so far as the offences under section 294 and sections 3(1)(r)(s) and 3(2)(va) of the S.C. & S.T. (PoA) Act are concerned, the same are also not attracted against appellant nos.2 and 3 and in a mechanical manner, the learned trial Court has passed the impugned order taking cognizance of the offences under sections 376(2)(n), 294/34 of the Indian Penal Code read with sections 3(1)(r)(s) and 3(2)(v) of the S.C. & S.T. (PoA) Act. It is further submitted that the appellant nos.1 and 2 are on bail granted by this Court. So far as appellant no.3 is concerned, notice as contemplated under section 41A Cr.P.C. was served on her and she abided by the terms and conditions of the said notice. It is further submitted that summons have been issued to all the three appellants and the appellant no.3 apprehends that if she appears before the learned trial Court in pursuance of the summons issued, she may be remanded to judicial custody and therefore, since she is a lady, this Court may direct that in the event appellant

no.3 appears in the learned trial Court and moves an application for bail, she may be released on bail.

Learned counsel for the State has not disputed about service of notice on the appellant no.3 under section 41A of Cr.P.C. and neither the learned counsel for the State nor the learned counsel for the informant has any objection if the appellant no.3 is released on bail on her appearing before the learned trial Court.

Considering the submissions made by the learned counsel for the respective parties, it is ordered that in the event appellant no.3 Sujata Rath appears before the learned trial Court within a period of four weeks from today and moves an application for bail, she shall be released on bail on such terms and conditions as the learned trial Court may deem just and proper.

While not inclining to interfere with the impugned order dated 12.04.2021, the appellants are at liberty to file an application for discharge at the appropriate stage and if the same is filed, the learned trial Court shall consider the same in accordance with law.

With the aforesaid observation, the CRLA stands disposed of.

Issue urgent certified copy of this order on proper application in course of the day.

(S.K. Sahoo)
Judge