

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.7183 of 2021

Kalandi Malik

.... Petitioner
Mr.Sukanta Ku.Nayak, Advocate

-versus-

State of Odisha

.... Opposite Party
Mr. M.K.Mohanty, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

04.05.2022

Order No.

06

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner as well as learned Additional Standing Counsel.
3. This is an application under Section 439 of the Code of Criminal Procedure filed by the Petitioner for bail in connection with Pattamundai P.S.Case No.406 of 2021 corresponding to G.R.Case No.80 of 2021 pending in the Court of the learned Additional Sessions Judge-cum-Special Judge, Kendrapara for alleged commission of offence under Sections 376(3) of the Indian Penal Code & under Section 4(2) of POCSO Act.
4. The Prosecution story in brief is that one Basanta Mallik son of Ramchandra Mallik lodged an F.I.R. against the Petitioner in Pattmundai Police Station alleging that when his minor daughter had been to School, the Petitioner passed comment to her. The said petitioner also kept physical relation with his daughter and now his daughter is pregnant of six months.

5. It is submitted by the learned counsel for the Petitioner that the Petitioner is languishing in custody since 09.08.2021. He further submits that the investigation has been concluded and charge sheet has been filed. Further, it is submitted by the learned counsel for the Petitioner that a false case has been foisted against the Petitioner to compel the Petitioner to marry the victim girl.

6. It is alleged in the F.I.R. that the Petitioner has illicit relation with the victim, as a result of which the victim gave birth to a child. To find out the paternity of the child, a DNA test was conducted. A report has been submitted stating that the Petitioner is not the biological father of the child. It is further submitted by the learned counsel for the Petitioner that since the Petitioner is permanent inhabitant of Kendrapara district, there is no chance of absconding or fleeing from the hands of justice. In the event of his release on bail he undertakes to appear before the learned trial court on each date of posting of the case.

7. Learned Additional Standing Counsel vehemently opposes the prayer for bail of the Petitioner stating that the allegations made in the F.I.R. are serious in nature in view of the statement made by the victim under section 164 Cr.P.C. In such view of the matter, the learned Additional Standing Counsel prays to reject the prayer for bail of the Petitioner.

8. Having heard learned counsel for the parties, taking into consideration the materials placed on record particularly the DNA test report which established a fact that the Petitioner is not the biological father of the child and considering the period of custodial detention of the Petitioner, I am inclined to grant bail to the Petitioner and it is directed that let the Petitioner be released on bail in the aforesaid case on furnishing a bail bond of Rs.50,000/- (Rupees Fifty

thousand) with one local solvent surety for the like amount to the satisfaction of the learned court in seisin over the matter subject to the following terms and conditions:

- i) he shall not indulge himself in any similar nature of offence.
- ii) shall appear before the trial court on each and every date fixed by the trial court till conclusion of trial.
- iii) shall not tamper with the prosecution evidence.
- iv) shall not influence or threaten any prosecution witnesses while on bail.
- v) he shall appear before the concerned Police Station once in a fortnight preferably on Sunday in between 10 A.M. to 1 P.M. till conclusion of trial.
- vi) Violation of any of the terms and conditions shall entail cancellation of bail.

8. The trial court may impose any other condition(s) as deem fit and proper.

9. BLAPL is accordingly disposed of.

10. Issue urgent certified copy as per Rules.

RKS

(*A.K. Mohapatra*)
Judge