

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.8285 of 2022

Sarat Majhi

....

Petitioner

Mr. R. Dhal, Advocate

-versus-

State of Odisha

....

Opp. Party

*Mrs. Susamarani Sahoo
Addl. Standing Counsel*

**CORAM:
JUSTICE S.K. SAHOO**

**ORDER
15.11.2022**

Order No.

02.

This matter is taken up through Hybrid arrangement (video conferencing/physical mode).

Heard learned counsel for the petitioner and learned counsel for the State.

This is an application for bail under section 439 of Cr.P.C. in connection with S.T. Case No.24/90 of 2021 arising out of Daspalla P.S. Case No.90 of 2021 pending in the Court of learned C.J.M. -cum- Asst. Sessions Judge, Nayagarh for offences punishable under sections 376/506 of the Indian Penal Code read with section 4 of the POCSO Act.

Learned counsel for the petitioner submitted that the petitioner is in judicial custody since 03.06.2021 and his earlier bail application in BLAPL

No.6726 of 2021 was rejected as per order dated 17.11.2022 taking into account the 164 Cr.P.C. statement of the victim as well as her medical examination report and liberty was granted to the petitioner to renew the prayer for bail after examination of the victim in the trial Court. Learned counsel for the appellant submitted that though the case was initially registered, inter alia, for the offence under sections 4 of the POCSO Act but during course of investigation, it was found that since the victim was a major girl at the time of occurrence, the offence under section 4 of the POCSO Act was deleted. He further submitted that the victim has been examined as P.W.5 in the trial Court and she has stated in her evidence that on the date of occurrence i.e., 01.06.2021 she had gone to meet the petitioner near the village road side in the evening hours and waited there for some time and then the petitioner came and both of them talked together and she further stated that she was talking with the petitioner over mobile phone and they used to be chatting with each other prior to the occurrence. She further stated that on the date of occurrence, both of them went to Tandabadi village in the motor cycle of the petitioner. The victim further stated that since the petitioner has given assurance of marriage, they used to keep physical relationship. Learned counsel for the petitioner

submitted that in view of such evidence, it appears that the victim is a consenting party and therefore, the bail application of the petitioner may be favourably considered.

Learned counsel for the State opposed the prayer for bail and submitted that the evidence of the victim is getting corroboration from the evidence of the parents of the victim who are examined as P.Ws.8 and 9.

Considering the submissions made by the learned counsel for the respective parties, the period of detention of the petitioner in judicial custody, the nature of evidence adduced by the victim in the trial Court, since the learned trial Court at appropriate stage is to adjudicate whether the victim was a consenting part or not, I am inclined to reconsider the prayer for bail and direct the petitioner to be released on bail.

Let the petitioner be released on bail in the aforesaid case on furnishing bail bond of Rs.50,000.00 (rupees fifty thousand) with two local solvent sureties each for the like amount to the satisfaction of the Court in seisin over the matter with further terms and conditions as the learned Court may deem just and proper subject to conditions that the petitioner shall appear before the learned trial Court on each date when the case would be posted for trial and shall not

indulge in any criminal activities and shall not try to tamper with the evidence.

Violation of any terms and conditions shall entail cancellation of bail.

The BLAPL is accordingly disposed of.

Issue urgent certified copy as per Rules.

(S.K. Sahoo)
Judge



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