

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.7419 of 2021

Gopal Behera and another ***Petitioners***
Mr. Aparesh Bhoi, Advocate
-versus-

State of Odisha and another ***Opposite Parties***
Mr. M.K. Mohanty, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

23.03.2022

Order No.

- 02.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. Despite notice issued on the informant, none appears on behalf of the informant and the matter was adjourned for appearance. Neither the informant nor any Advocate appears for the informant.
 3. Heard learned counsel for the Petitioners and learned counsel for the State. Perused the F.I.R., case diary, the statement of the witnesses and other relevant documents on record and the statement of the victim recorded under Sections 161 as well as 164 of the Cr.P.C.
 4. This is an application under Section 439 of the Criminal Procedure Code.
 5. The Petitioners are accused in POCSO Special Case No.72 of 2021 arising out of Bamapada (Industrial Area) P.S. No.35 of 2021 pending in the court of learned Special Judge(POCSO), Bolangir for commission of offence punishable under Sections 450/376/376-

D/376(3)/34, I.P.C. read with Section 6 of the POCSO Act.

6. The in her written F.I.R. dated 13.03.2021, the informant-Sumitra Mahanta, the mother of the victim girl stated that in her absence on 07.03.2021 in the day time her minor girl was gang raped by the Petitioner-1 (Gopal Behera) along with his other friends. Accordingly, the police registered the F.I.R. under Section 376-D, I.P.C. But in course of investigation, the informant in her statement under section 161, Cr.P.C. stated that her minor daughter was sexually abused by the Petitioner No.2, namely Puja Behera (wife of Petitioner No.1) as the Petitioner No.2 injected her finger into the vagina of the victim girl. Moreover, the victim girl Gurubari in her statement under Section 161, Cr.P.C. specifically stated that Gopal Behera and any other persons have not committed any criminal act against her. Differing from the written F.I.R., the informant in her statement under Section 161, Cr.P.C. alleged that Gopal Behera (Petitioner No.1) committed rape on her.

After arresting the accused petitioners (husband and wife), the investigating Officer stated in the forwarding report that prima facie evidence of rape to the informant by Gopal Behera (Petitioner No.1) is available for which offences under Sections 450/376/506/34, I.P.C. are made out and prima facie evidence of sexual abuse to the informant's minor daughter by Puja Behera (Petitioner No.2) is available for which offences under Sections 450/376/376(3)/506/34, I.P.C. read with Section 6 of the POCSO Act are made out.

7. Learned counsel for the Petitioners submits that the Petitioners are in custody since 16.03.2021 and in the meantime, investigation has been concluded and charge-sheet has already been submitted. He further submits that the Petitioners have been falsely implicated in the present case and the allegations made against the Petitioners are

baseless and concocted. Further, learned counsel for the petitioners referring the statement of the victim recorded under Section 161, Cr.P.C. submits that there is no allegation of rape made out against the petitioners.

8. Further, learned counsel for the Petitioners submits that referring the statement of the victim recorded under Section 161 as well as 164 of the Cr.P.C. and medical examination of the victim do not corroborate the case and that there is no scope for absconding or fleeing away from the hands of the justice, as the Petitioner is permanent resident of the locality.

9. Mr. Mohanty, learned Additional Standing Counsel for the State, vehemently, opposes the prayer for bail of the petitioners on the ground that the alleged crime is heinous in nature. Therefore, he prays for rejection of the bail application of the petitioners. He also submits that in the event the petitioners released on bail, they might threaten / influence the prosecution witnesses particularly the victim. Further, he submits that in the event this Court is inclined to release the petitioners on bail, some stringent terms and conditions may be imposed.

10. Considering the surrounding facts and circumstances, nature of allegation, statement of the victim recorded under Sections 161 and 164, Cr.P.C. and the period of custodial detention of the Petitioner, it is directed that let the Petitioners be released on bail on furnishing a bail bond of Rs.30,000/- (rupees thirty thousand) each with two local solvent sureties for the like amount to the satisfaction of the learned court in seisin over the matter subject to conditions that :-

- I. The Petitioners shall not be involved in any offence of similar nature;

- II. they shall not tamper with the prosecution evidence or make any attempt to threaten or influence the witnesses especially the victim or her family members in any manner whatsoever;
- III. they shall not make any default in attending the court during trial on each date;
- IV. they shall not make any attempt to contact the victim and shall stay away from the victim and her family members; and
- V. they shall appear before the concerned Police Station once in a fortnight preferably on 'Sunday' in between 10.00 A.M. to 1.00 P.M. till conclusion of trial.

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

11. It is open for the court in seisin over the matter to impose other conditions may deem just and proper.

12. The Bail Application is accordingly disposed of.

Urgent certified copy of this order be granted on proper application.

(A.K. Mohapatra)
Judge