

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.724 of 2022

Shyama Sahu

....

Appellant

Mr. Satyabrata Panda, Advocate

-versus-

State of Odisha and another

....

Respondents

Mr. P.C. Das, ASC

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

22.12.2022

Order No.

07.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. This an appeal under Section 14-A(2) of the S.C. & S.T. (PoA) Act, 1989.
3. By filing the present Criminal Appeal, the Appellant has approached this Court for the second time for his release on bail. The earlier prayer for bail of the Appellant was disposed of by this Court vide order dated 19.04.2022 passed in CRLA No.80 of 2022 as not pressed, since learned counsel for the Appellant did not want to press the bail application in respect of the present Appellant with liberty to renew his prayer after examination of victim by the trial court.
4. The present Criminal Appeal is directed against the order dated 16.08.2022 passed by the learned Additional Sessions Judge, Padampur in Spl. G.R. No.65 of 2021 wherein the prayer for bail of the Appellant has been rejected, which arises out of Gaisilat P.S. Case No.147 of 2021 for alleged commission of offences under Sections 147/ 148/ 149/ 506/ 294/ 427/ 452/ 436/ 307/ 395/376(D) of

the I.P.C. read with Section 3(1)(r)(s)/3(2)(v)(va) of the S.C. & S.T. (PoA) Act.

5. Heard Mr. Satyabrata Panda, learned counsel appearing for the Appellant as well as Mr. P.C. Das, learned Additional Standing Counsel appearing for the State-Respondent No.1. Pursuant to the notice, the Respondent No.2-Informant appeared before this Court through virtual mode and objected to release of the Appellant on bail. Perused the Case Diary as well as other relevant documents placed before this Court for consideration.

6. The prosecution story as revealed from the F.I.R., in gist, is that the Informant-Respondent No.2, namely, Smt. Surya Kumbhar lodged an F.I.R., inter alia, alleging that her son, namely, Prashanta Kumbhar and the daughter of one Thurli Sahu, namely, Nandini Sahu were found missing from the village. Thurli Sahu suspected that his daughter has been abducted by the son of the Informant. A meeting was convened in the village to discuss the matter. In the said meeting, the villagers decided to force the Informant to declare her son as “TYAJYA PUTRA”. Accordingly, she did that. Thereafter, on 11.08.2021 at about 6.00 P.M. accused persons, namely, Umakanta Sahu, Nihar Sahu, Pritam Sahu, Shyama Sahu (Appellant), Babuli Khamari, Muna Panda, Khedu Sahu, Jogi Khamari, Kamala Sahu, Thurli Sahu, Geeta Sahu and Betikhai Sahu came to her residence armed with weapons like thenga and bhujali etc. Thereafter, the accused persons abused the Informant in filthy language by uttering her caste. The Informant remained inside the house by locking the door. Thereafter, Umakanta Sahu, Nihar Sahu, Shyam Sahu and Babul Khamari broke the door forcibly and dragged her by holding her hair. The Informant shouting to leave her alone. Thereafter, she

was assaulted by the accused persons gathered there by means of a bhujali, as a result of which, she has sustained bleeding injury. Thereafter, it is alleged that Umakanta Sahu committed rape on her and after him other accused persons including the present Appellant committed gang rape on the Informant. She further alleged that while she was laying on semiconscious condition, the accused persons including the ladies assaulted her by means of kick blow over her stomach, private part, head and chest. She further alleged that they have taken away gold ornaments, mobile phone and 20 Nos. of goats from her house.

7. It is submitted by Mr. Panda, learned counsel appearing for the Appellant that the Appellant was remanded in this case on 06.09.2021 whereas the other accused persons are in custody since 29.08.2021. It is further submitted that in respect of self-same occurrence, another F.I.R. has been lodged by the wife of the brother-in-law of the Informant, namely, Janata Kumbhar which was registered as Gaisilat P.S. Case No.148 of 2021, corresponds to Spl. G.R. Case No.66 of 2021 for alleged commission of offence punishable under Sections 147/452/294/435/436/395/149 of the I.P.C. read with Sections 3(1)(r)(s)/3(2)(v)(va) of the S.C. & S.T. (PoA) Act. It is further contended by Mr. Panda that two F.I.Rs. have been lodged by one family in respect of the self-same occurrence on the very same day involving self-same accused persons by two different Informant, who are sister-in-laws. It is also contended by Mr. Panda that the investigation of the case is over and charge sheet has been filed and at the moment the trial of the case is going on. He further submits that the victim was sent for medical examination on the request of the I.O. The Medical Officer has submitted his report

after examination of the victim. On medical examination, it was detected that the victim has sustained some injuries on her body. However, there is no confirmation with regard to any sexual assault like the gang rape on the victim. A copy of the medical examination report has also been annexed to the bail application as Annexure-3. On perusal of the medical report, it is seen that no injury was found on her private part. Mr. Panda further submitted that the present case is the counterblast to the Gaisilat P.S. Case No.116 of 2021 registered under Section 363 of I.P.C. along with other family members wherein it is alleged that daughter of one Thurli Sahu, namely, Nandini Sahu has been abducted by the son of the Informant, namely, Prashanta Kumbhar. Since there was a caste problem between the two groups, i.e., the girl belonging to general caste and the boy belonging to SC community, the accused persons asked the Informant about the incident and further enquired about the whereabouts of Nandini Sahu, as a result of which, the Informant and her family members apprehending danger from the villagers has foisted a false case implicating all the villagers in the alleged crime. Mr. Panda further submitted that on perusal of the materials placed on record, it cannot be said that there was any sexual assault on the victim. As the son of the Informant had eloped with the daughter of one Thurli Sahu, the Informant to save herself and her son has lodged this false case implicating the present Appellant and others. He further submitted that the Appellant does have any criminal antecedent and he is a resident of locality and having his own house. Therefore, there is no chance of absconding from justice in the event release on bail by this Court. Mr. Panda further submitted that some of the co-accused persons have already been released on bail

including one Thurli @ Tarakanta Sahu, who happens to be the principal accused in the present case, vide order dated 14.07.2022 passed by this Court in CRLA No.596 of 2021.

8. Mr. P.C. Das, learned Additional Standing Counsel appearing for the State-Respondent No.1, on the other hand, opposes the bail application of the Appellant on the ground that on the basis of the materials on record, a case under the alleged section is made out against the Appellant. He further submits that the rivalry between the two groups originated from the occurrence which is subject matter of Gaisilat P.S. Case No.116 of 2021 wherein it is alleged that the son of the Informant had abducted the daughter of one Thurli Sahu. Accordingly, both sides have registered the case and counter case against each other. However, Mr. Das fairly submitted that there exists clear evidence with regard to specific role played by each of the accused persons in the alleged crime. Finally, Mr. Das contended that since the trial is going on, it would not be proper and desirable to release the accused persons on bail at this juncture, otherwise the same might affect the outcome of the trial.

9. Having heard learned counsel for the parties and upon a careful consideration of the rival contentions and upon a careful conspectus of the factual background of the present case and also taking into consideration the materials placed before this Court for consideration, particularly the medical examination report of the victim and further keeping the fact that one of the co-accused, namely, Thurli @ Tarakanta Sahu has already been enlarged on bail vide order dated 14.07.2022 passed by this Court in CRLA No.596 of 2021, this Court thinks it proper and in the interest of justice that the Appellant be enlarged on bail with conditions.

10. Hence, it is directed that the Appellant be released on bail in the aforesaid case on furnishing bail bond of Rs.30,000/-(Rupees thirty thousand) with two local solvent sureties each for the like amount to the satisfaction of the Court in seisin over the matter.

11. The release of the Appellant shall also be subject to such other conditions as would be deemed fit and proper by the Court in seisin over the matter.

12. While imposing conditions, the Court in seisin over the matter shall also impose the conditions whereby the Appellant while on bail shall not threaten, harass or terrorize the Informant and her family members in any manner whatsoever and shall appear before the trial court on each date fixed for trial, failing which it is open for the Court in seisin over the matter to treat this order as revoked and proceed against the Appellant by issuing N.B.W. and take him to custody for violation of the aforesaid terms and conditions.

13. With the aforesaid observation and direction, this Criminal Appeal is allowed subject to the terms and conditions mentioned hereinabove.

(A.K. Mohapatra)
Judge