

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.7535 of 2021

Sarbeswar Malik @ Kalia

..... Petitioner
Mr.S.R.Mohapatra, Advocate

-versus-

State of Odisha

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

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

29.03.2022

Order No.

- 6.
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. Perused the Case Diary, F.I.R. and the statements of the witnesses recorded under section 161 Cr.P.C. and statement of the victim recorded under section 164 Cr.P.C.
 4. This is an application under Section 439 of the Code of Criminal Procedure filed by the Petitioner for bail in connection with Balaramgadi Marine P.S.Case No.04 of 2021, corresponding to C.T.Case No.275 of 2021, pending in the Court of the learned S.D.J.M., Balasore for alleged commission of offence under Section 376-D of the Indian Penal Code.
 5. The prosecution case as revealed from the FIR is that on 08/09.04.2021 at about 7 A.M. while the informant had gone to attend call of nature to the backside of his company, he found one

lady lying to the side of the boundary of the company. It is further alleged by the informant that he along with some other women went near that lady and they found her unconscious. On being asked she disclosed her name as Raimani Tudu and she has been raped by four persons against her will and the accused persons also assaulted her and she identified co-accused Sankar Murmu and did not identify other accused persons. After the occurrence the accused persons fled away from the spot leaving her unconscious. Thereafter she has been rescued by local persons and sent to D.H.H. Balasore for medical treatment.

6. It is submitted by the learned counsel for the Petitioner that the Petitioner is in custody since 12.04.2021. Further learned counsel for the Petitioner submits that investigation has been completed and charge sheet has been submitted. It is submitted by the learned counsel for the Petitioner that the Petitioner was not initially named in the F.I.R. Later on, on the basis of the statements of witnesses, he has been falsely implicated in this case. Further, learned counsel for the Petitioner relying on the statement of the victim recorded under section 164 Cr.P.C. that the victim has named one Shankar Murmu @ Panda who is the principal accused, who has committed the sexual assault on the victim. He further submits that the medical examination report submitted by the Doctor does not support the case of the Prosecution with regard to commission of rape on the victim. It is also submitted by the learned counsel for the Petitioner that the petitioner belongs to the locality, therefore, there is no chance of his absconding or fleeing away from the hands of justice and in the event of his release on bail, he will appear before the learned trial on each and every date.

6. Learned Additional Standing Counsel vehemently opposes the

prayer for bail of the Petitioner on the ground that the nature of allegations is very heinous in nature and as it appears the F.I.R. depicted a picture that the victim was brutally raped by the accused persons. However, he does not dispute the contents of the statement of the victim recorded under section 164 Cr.P.C.

7. Considering the aforesaid fact and after perusal of the case diary, statement of the victim recorded under section 164 Cr.P.C. and the medical examination report, I am inclined to release 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.30,000/- (Rupees Thirty 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 appear before the concerned Police Station once in a fortnight preferably on Sunday between 10 A.M. to 1 P.M. till conclusion of trial.
- ii) shall cooperate with the trial of the case and shall appear in court on each and every date to which the case is posted.
- iii) shall not indulge in any offence of similar nature
- iv) shall not threaten or terrorise the witnesses while on bail and also shall not try to contact the victim in any manner.
- v) shall not leave the jurisdiction of the trial court with prior permission of the trial court till conclusion of the trial.
- v) Violation of any of the terms and conditions shall entail cancellation of bail.

8. The BLAPL is accordingly disposed of.

9. Issue urgent certified copy as per Rules.

