

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 8542 of 2022

Bila @ Damodar Sahoo

....

Petitioner

Mr. M. Mohanty, Advocate

-versus-

State of Orissa

....

Opposite Party

Mr. P.K. Maharaj, ASC

Mr. N. Panda, Advocate

(Informant)

CORAM: JUSTICE V. NARASINGH

ORDER
04.11.2022

Order No.

02.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the informant.
3. The petitioner is an accused in connection with Spl. G.R. Case No.97 of 2022, pending in the Court of learned Additional Sessions Judge -cum- Special Court under POCSO Act, Cuttack, arising out of Niali P.S. Case No.279 of 2022, for alleged commission of offences under Sections 363/354/354(A)/307/376/511 of IPC read with Section 8 of POCSO Act.
4. Being aggrieved by the rejection of his application for bail U/s.439 Cr.P.C. by the learned Additional Sessions Judge -cum- Special Court under POCSO Act, Cuttack, by order dated

06.08.2022 in the aforementioned case, the present BLAPL has been filed.

5. Mr. N. Panda, Learned counsel for the informant, on instruction, submits that she is the mother of the victim and does not want to pursue her complaint and to that effect, she has filed an affidavit, which is on record.

6. Learned counsel for the petitioner submits since the case has been charge-sheeted and the matter has been compromised as evidenced from the affidavit of the informant, there being bleak chance of conviction, further continuance of the petitioner in custody is uncalled for and is punitive.

7. The learned Magistrate, who made an endeavor to record the statement of the victim aged about 5 years, has opined that the victim is unable to give answer to any of the questions put forward to her, which shows she probably does not even understand the questions. Therefore, he has opined that she is incompetent to give her statements, accordingly, her statement could not be recorded.

8. Perused the statements of the prosecution witnesses Rabi Narayan Patra, Jyostna Rani Pradhan, who is aged about 14 years and Sandhya Rani Naik aged about 12 years. The statement of Jyostna Rani Pradhan and Sandhya Rani Naik, clearly reveal the overt act committed by the petitioner.

9. Taking note of the statement of the witnesses and keeping in view the rigors of the POCSO Act and considering the age of the victim being 5 years, this Court is **not inclined** to consider the bail application notwithstanding the affidavit of the mother of the victim-informant, which is ignored.

10. Accordingly, the BLAPL stands disposed of.
11. Urgent certified copy of this order be granted as per rule.

(V. NARASINGH)
Judge

Ayesha

