

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.7596 of 2021

Anu Samal

....

Petitioner

Mr. S. Mohanty, Advocate

-versus-

State of Odisha

....

Opposite Party

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

*Mr. Arindam Bisoi, Advocate for the
Informant*

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

16.03.2022

Order No.

04.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner 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 statements of the victim recorded under Sections 161 and 164 of the Cr.P.C.
3. This is an application under Section 439 of the Criminal Procedure Code.
4. The Petitioner is an accused in Special G.R. Case No.114 of 2019 arising out of Sadar P.S. No.146 of 2017 pending in the court of learned ADJ-cum-Spl. Court under POCSO for commission of offence punishable under Section 376(3), I.P.C. read with Section 6 of the POCSO Act.

5. The prosecution allegation, in brief, is that the present petitioner is the cousin son-in-law of the informant, who used to come to her house. On 05.05.2017 at about 9.00 A.M. in the absence of the informant, the accused persons kidnapped her minor niece, namely, Mamali Samal. When the informant returned to her house at about 11.00 A.M., she saw that her niece is not found in her house and she ascertained from others that the present petitioner had taken away her niece.

6. Learned counsel for the Petitioner submits that the Petitioner is in custody since 13.07.2021 and in the meantime, investigation has been concluded and charge-sheet has already been submitted. He further submits that due to some family dispute, the Petitioner has been falsely implicated in the present case.

7. Further, learned counsel for the Petitioner submits that the petitioner is distantly related to the victim as brother-in-law and the victim girl, who was living with her elder mother. Thereafter, the present petitioner, who is related to the victim as brother-in-law came to the house of the elder mother of the victim and took her away. Thereafter she was staying with the present petitioner's family for all years. One day the victim escaped from the family of the petitioner and came to her elder mother's house and thereafter the present F.I.R. has been lodged against the petitioner. Further he also submits that the allegations made in the F.I.R. are not supported by the medical examination report of the victim. Further the statement of the victim recorded under Section 164, Cr.P.C. of the victim does not come clear picture as to whether actually sexual assault or not and he submits that there is no scope for absconding or fleeing away from

the hands of the justice, as the Petitioners are permanent resident of the locality.

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

9. Considering the surrounding facts and circumstances, nature of allegation, statement of the victim recorded under Sections 161 as well as 164, Cr.P.C. and the period of custodial detention of the Petitioners, it is directed that let the Petitioner be released on bail on furnishing a bail bond of Rs.50,000/- (rupees fifty thousand) with local solvent surety for the like amount to the satisfaction of the learned court in seisin over the matter subject to conditions that :-

- I. The Petitioner shall not be involved in any offence of similar nature;
- II. he 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. he shall not make any default in attending the court during trial on each date;

- IV. he shall not make any attempt to contact the victim and shall stay away from the victim and her family members; and
- V. he 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.

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

11. The Bail Application is accordingly disposed of.

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

(A.K. Mohapatra)
Judge