

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.469 of 2021

*Bhagirathi Naik @ Bhalu* .... *Petitioner*

*Mr. Sujay Shankar Singhdeo, Adv.*

*-versus-*

*State of Odisha and Anr.* .... *Opposite Parties*

*Mr. G. R Mohapatra, ASC*

**CORAM:**  
**DR. JUSTICE S.K. PANIGRAHI**

**Order**  
**No.**

**ORDER**  
**11.07.2022**

- 03.
1. This matter is taken up through hybrid arrangement.
  2. This CRLA has been filed by the petitioner challenging the order dated 17.01.2020 passed by the learned Additional Sessions Judge-Cum- Special Judge, Bhawanipatna in J.C.T. Case No.220/92 of 2019 arising out of Junagarh P.S. Case No.224 of 2019 rejecting his application for bail with a prayer to release him on bail.
  3. It appears that the petitioner in this case was a juvenile in conflict with law and said to have been indicted along

with another in a case registered under Sections 366, 376(d), 307, 292(2)(a), 500, 506, 309 and Section 34 of the I.P.C. read with Section 66(E), 67, 67(A) of the Information Technology Act, 2000 and Section 6 of the Indecent Representation of Women (Prohibition) Act, 1986. The petitioner being indicted in the aforesaid case had made a prayer before the learned Additional Sessions Judge-Cum- Special Judge, Bhawanipatna under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as 'the Act' for brevity) for release on bail. Learned Additional Sessions Judge-Cum- Special Judge, Bhawanipatna vide the aforesaid impugned order refused to release the petitioner on bail observing that since the trial is not commenced, the chance of terrorizing the informant-victim and her family members cannot be ruled out. He further observed that if he is enlarged on bail at this stage, it will lead to a looming threat to the family of the victim. Moreover, the release of the accused, facing charge of gang rape on the victim would give an adverse impression to the society. Challenging the same, the petitioner has filed the present CRLA with a prayer to release him on bail.

4. Needless to say that Section 12 of the Act mandates that a juvenile in conflict with law deserves to be released on bail with or without surety or be placed under the supervision of a Probation Officer or under the care of any fit institution or fit person. However, he shall not be so released if there appears reasonable grounds for believing that his/her release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger which would defeat the ends of justice. From the aforesaid, it appears that the release on bail of a juvenile in conflict with law is a rule but refusal is an exception which can only be done in the existence of circumstances which are detrimental to the interest of the juvenile in conflict with law or defeats the ends of justice. Heinousness and seriousness of an offence has got nothing to do while considering the prayer for bail. The satisfaction to reject the prayer of a juvenile in conflict with law for bail on the ground of presence of circumstances as stated above must be based on material on record and material satisfaction of the Court.

5. Keeping in mind the same when the impugned order is addressed, it appears to this Court that virtually the Additional Sessions Judge-Cum- Special Judge,

Bhawanipatna is not justified in explaining as to how the release of the juvenile in conflict with law is going to defeat the ends of justice which actuated the court to refuse the juvenile in conflict with law to go on bail. Learned Additional Sessions Judge-Cum- Special Judge, Bhawanipatna has virtually not discussed the materials as to how he arrived at such conclusion dealing with the fact that release of the accused, facing charge of gang rape on the victim would give an adverse impression to the society.

6. Therefore, it appears to this Court that learned Additional Sessions Judge-Cum- Special Judge, Bhawanipatna has not properly exercised his discretion. Hence, this CRLA is allowed and the impugned order dated 17.01.2020 passed by the learned Additional Sessions Judge-Cum- Special Judge, Bhawanipatna stands set aside. The matter is remitted back to the learned Additional Sessions Judge-Cum- Special Judge, Bhawanipatna to address the prayer of the petitioner afresh giving a chance of hearing to the parties with a direction to pass reasoned order keeping in mind the aforesaid observation and the law in this regard. The entire exercise shall be completed within a period of thirty days of receipt/communication of this order.

7. With the aforesaid order, this CRLA stands disposed of.

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

*(Dr. S.K. Panigrahi)*  
*Judge*

BJ

