

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.7975 of 2021

Pratap Mandal

.... ***Petitioner***
Mr. A.K. Sahoo, Advocate
-versus-

State of Odisha

.... ***Opposite Party***
Mr. K.K. Nayak, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

25.04.2022

Order No.

04.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Despite notice issued on the informant, none appears on behalf of the informant and the matter was adjourned for appearance. Neither the informant nor any Advocate appears for the informant.
3. Learned counsel for the State submits that the Investigating Officer of the concerned Police Station had been to the village of the informant but he did not trace out the informant and listened from the other persons of the locality that the informant and the victim had been to outside the State for earning their livelihood. Hence, he could not serve the notice on the informant.
4. 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 as well as the statement of the victim recorded under Section 161, Cr.P.C.

5. This is an application under Section 439 of the Criminal Procedure Code.

6. The Petitioner is an accused in T.R. Case No.24 of 2021 arising out of Motu P.S. No.44 of 2021 pending in the court of learned Additional Sessions Judge-cum-Special Judge, Malkangiri for commission of offence punishable under Sections 363/366/376(3)/376(2)(n)/323, I.P.C. read with Section 6(1) of the POCSO Act

7. The case of the prosecution, in short, is that on 07.05.2021, the informant lodged the F.I.R. alleging that her daughter aged about 16 years was missing from 15.04.2021. Further she alleged that on 06.05.2021 her daughter returned to her house and revealed that the petitioner kidnapped her and kept her in his house and had sexual intercourse with her against her will. Further, she alleged that the parents of the petitioner had promised her daughter, that they would get her married with their son and two days prior to 06.05.2021 his parents tortured her and the accused was trying to kill her daughter by strangulating her, but her daughter came out of their clutches. Hence, this case.

8. Learned counsel for the Petitioner submits that the Petitioner is in custody since 08.05.2021 and in the meantime, investigation has been concluded and charge-sheet has already been submitted. He further submits that the petitioner and the victim are very close and both of them residing as daily wages and to work together. They developed love relationship each other. Learned counsel for the petitioner further submits that the petitioner married the victim in a temple and they are living as husband and wife and that they had consensual sexual relationship between the parties. In fact, both were

staying together. But the family of the petitioner did not accept the victim and they compelled to leave the victim in her parental house. Thereafter, the problem started and the present F.I.R. has been lodged. It is also submitted the petitioner has been falsely implicated in this case.

9. Further, learned counsel for the Petitioner submits that as per medical examination report of the victim, there is no sign or symptom of recent sexual intercourse and that there is no scope for absconding or fleeing away from the hands of the justice, as the Petitioner is permanent resident of the locality.

10. Learned Additional Standing Counsel for the State, vehemently, opposes the prayer for bail of the petitioner on the ground that the alleged offence is serious in nature. Admittedly, there was love relation between the victim and the petitioner. Therefore, he prays for rejection of the bail application of the petitioner. He also submits that 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.

11. Considering the facts and circumstances, materials on record and the period of custodial detention of the Petitioner, it is directed that let the Petitioner be released on bail 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 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.

- 12. It is open for the court in seisin over the matter to impose other conditions may deem just and proper.
- 13. The Bail Application is accordingly disposed of.

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

(A.K. Mohapatra)
Judge