

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.8294 of 2021

Biswajit Samal @ Babul

.... ***Petitioner***
Mr. A. Mishra, Advocate

-versus-

State of Odisha

.... ***Opposite Party***
Mr. P.K. Rout, A.G.A.
Ms. Rajalaxmi Biswal, Advocate for the
informant

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER
13.07.2022

Order No.

04.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner, learned counsel for the informant and learned counsel for the State. Perused the F.I.R., case diary, the statement of the victim recorded under Section 164, Cr.P.C. as well as 161, Cr.P.C. and other relevant documents on record.
4. This is an application under Section 439 of the Criminal Procedure Code.
5. The petitioner is an accused in Special (POCSO) No.71 of 2019 arising out of Talcher P.S. No.329 of 2019 pending in the court of learned Additional Sessions Judge-cum-Special Court under POCSO Act, Angul for commission of offence punishable under Sections 366/506/376(2)(n)/109/34, I.P.C. read with Section 6 of the POCSO Act.
6. The prosecution story, as per the F.I.R. lodged by the

informant, is that the daughter of the informant and the petitioner had a love relationship between them and on the relevant day, the daughter of the informant of her own volition, she fled away with the petitioner with the help of other co-accused persons, but it is alleged by the informant that the petitioner had kidnapped the daughter of the informant on the pretext of marriage, upon these allegations the F.I.R. has been lodged against the petitioner for the alleged commission of offences. Hence, this case.

7. It is submitted by learned counsel for the petitioner that the petitioner was enlarged on anticipatory bail by order dated 01.06.2020 in ABLAPL No.5773 of 2020 and thereafter, the petitioner has been arrested and taken into custody on the ground that wrong statement was made before this Court and obtained the anticipatory bail.

8. On perusal of the statement of the victim recorded under Section 164, Cr.P.C., it appears that the case of elopement with the petitioner out of her own volition.

9. Learned counsel for the State submits that as per record, the year of birth of the victim is 20th June, 2004. Therefore, taking into consideration it is clear that the victim above 18 years now.

10. Learned counsel for the State, on the other hand, submits that the victim girl became pregnant as per their physical relationship and as such, the relationship was belated stage of promise to marry the victim.

11. On perusal of the statement of the victim recorded under Section 164, Cr.P.C., this Court is of the considered view that the victim had eloped with the petitioner out of her own volition.

However, she was a minor at the time of alleged occurrence.

12. Further, learned counsel for the petitioner submits that the petitioner is in custody since 04.09.2021 and in the meantime, investigation has been concluded and charge-sheet has already been submitted by the Investigating Officer. Further, learned counsel for the petitioner submits that the daughter of the informant was love relationship with the present petitioner and the victim eloped with the petitioner out of her own volition. As per the statement of the victim recorded under Section 164, Cr.P.C., she has categorically stated the entire incident and that she left her parental house out of her own volition. Further, learned counsel for the petitioner submits that there is no scope for absconding or fleeing away from the hands of the justice, as the petitioner is a permanent resident of the locality.

13. Learned counsel for the State, vehemently, opposes the prayer for bail of the petitioner on the ground that the alleged crime is heinous in nature. 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 and that he does not dispute the statement of the victim recorded under Section 164, Cr.P.C.

14. Having heard the learned counsels for the parties, considering the nature of allegation, statement of victim recorded under Section 164, Cr.P.C., materials are available 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 two local solvent sureties each 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; and
- IV. He shall not make any attempt to contact the victim and shall stay away from the victim and her family members.

Violation of any of the terms and conditions shall entail cancellation of bail.

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

16. The Bail Application is accordingly disposed of.

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

(A.K. Mohapatra)
Judge