

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 2701 of 2022

Deba Prasad Sahu

....

Petitioner

Mr. Partha Sarathi Nayak, Advocate

-Versus-

State of Odisha

....

Opposite Party

Mr. S.K.Mishra, ASC

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

27.09.2022

Order No.

01.

1. Heard learned counsel for the petitioner and learned counsel for the State.
2. Instant petition under Section 482 Cr.P.C. is filed by the petitioner challenging the order of cognizance dated 17th May, 2022 passed by the learned S.D.J.M., Hindol in G.R. Case No.159 of 2022 arising out of Balimi P.S. Case No.54 of 2022 on the grounds stated therein.
3. Perused the copy of the FIR and chargesheet at Annexures-1 & 2 respectively and copy of the impugned order as at Annexure-3 along with other connected documents.
4. In fact, the FIR was lodged by the informant consequent upon which Balimi P.S. Case No.54 of 2022 has been registered and after completion of investigation, chargesheet under Sections 457/376(1)427/323/34 of IPC was filed, a copy of which is produced in Court for perusal. As per the chargesheet, the petitioner has been shown as an absconder, consequent upon which, NBWA was issued against him which is pending execution.

5. Learned counsel for the petitioner submits that even though the points raised are good grounds for the purpose of trial but it may not be adequate for quashing of the criminal proceeding or for that matter, the order of cognizance under Annexure-3. Considering the nature of allegations in Annexure-1 and the fact that the victim informant did not receive any injury on account of sexual assault which is revealed from her medical examination report, it is further submitted that the petitioner should at least be directed to surrender and go on bail. The learned counsel for the petitioner refers to the contents of the FIR and the circumstances under which the alleged mischief was committed by the petitioner during the incident.

6. Learned counsel for the State on the other hand submits that there is a prima facie case revealed from the FIR and chargesheet and so far the petitioner is concerned, he has been shown as an absconder in the chargesheet and therefore, he should be directed to surrender before the learned court below and move for regular bail. It appears that an application under Section 205 Cr.P.C. was moved by the petitioner after the order of cognizance order was passed by the learned S.D.J.M., Hindol which was rejected and thereafter, the court issued NBWA against him.

7. On consideration of the FIR and the chargesheet, the Court finds that there is a prima facie case and therefore, learned court below subsequent to the filing of chargesheet rightly took cognizance of the offences including the offence under Section 376 IPC which calls for no interference.

8. The Court finds that the petitioner alleged to have forcibly entered into the informant's room at midnight and when his presence was noticed by her husband, there was a hue and cry and members of the family gathered. The victim alleged that despite her

objection, the petitioner managed to cohabit with her and did the mischief which was ultimately noticed by her husband.

9. Considering the above facts and the circumstances under which the incident happened, whereafter the FIR was lodged, the Court is of the opinion that the petitioner who has been shown as an absconder in the chargesheet should be directed to surrender before the learned court below.

10. In view of the discussions made herein above, the CRLMC stands dismissed. However, in the peculiar facts and circumstances of the case, the Court is of the view that the petitioner should be allowed to surrender before the learned court below and released on bail subject to conditions. In view of above, the petitioner is directed to surrender before the learned S.D.J.M., Hindol on or before 14th October, 2022 in G.R. Case No.159 of 2022 and in the event of his surrender, the court shall release him on bail with stringent conditions imposed.

11. An urgent certified copy of this order be issued as per rules.

(R.K. Pattanaik)
Judge