

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.8316 of 2021

Chiku @ Chinmaya Sagar Behera ***Petitioner***
Mr. Anirudha Das, Advocate
-versus-

State of Odisha ***Opposite Party***
Mr. M.K. Mohanty, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER
10.03.2022

Order No.

- 07.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. Heard learned counsel for the Petitioner as well as learned Additional Standing Counsel for the State.
 3. On being noticed, the victim appeared through virtual mode by remaining present at the Police Station and opposed the release of the Petitioner on bail.
 4. This is an application under Section 439 of the Cr.P.C. filed by the Petitioner for release on bail in connection with C.T. SPL(P) No.45 of 2021 pending in the court of learned Judge, Special Court (POCSO), Dhenkanal which arises out of Dhenkanal Sadar P.S. Case No.381 of 2021 for commission of offence under Sections 341/323/376(3)/506, I.P.C. and Section 4(ii) of POCSO Act, 2012 read with Sections 3(1)(r)/2(v)(va) of the S.C. and S.T. (PoA) Act, 1989.
 5. The prosecution case, in short, is that on 06.07.2021 at about

3.00 P.M. the victim a minor girl aged about 15 years had been to nearby Chakunda Jungle area to attend call of nature. By that time, the accused petitioner came from her back side and gagged her mouth by putting his hands and forcibly dragged the victim with his ill intention towards the bushes. When the victim protested, the accused slapped her and shown a Bhujali and put the said weapon on the neck of the victim and forcibly committed penetrative sexual assault on her. Further the accused also threatened to kill and abused her obscene words aspersing to her caste. The informant being the mother of the victim searched for her daughter and by that time, the accused told her that her daughter is lying nearby jungle. Then the informant rushed to the said place and found her daughter was lying in half naked condition. After regaining sense, the victim informed the matter her mother. It is further alleged that the accused threatened to kill them, if report the matter to police or anybody else. But the informant report the matter before the police basing upon the said report, the present F.I.R. has been registered.

6. Learned counsel for the Petitioner submits that the accused is innocent person and he is in custody since 10.07.2021 and that the investigation of the case has been concluded in the meantime and the police has already filed charge-sheet. He further submitted that the victim has been medically examined and the report submitted by the examining doctor. Learned counsel for the petitioner strenuously argued that since the doctor after examination of the victim has reported that no sign of recent sexual intercourse was detected and that no injuries on the private part of the victim has been found, therefore, the allegation of the prosecution and the statement of the victim are not to be believed and are completely to be discarded. Learned counsel for the Petitioner further submits that no injury was detected on the person of the victim and as such, raises question by saying that the victim

being raped or sexual assaulted forcibly then there would have been injuries on the person of the victim. Since no injuries were detected by the examining doctor, the prosecution story as well as version of the victim are not trustworthy and the same should be discarded.

7. Learned counsel for the State, on the other hand, submits that the allegation made in the F.I.R. is heinous in nature. He further submits that the victim is aged about 15 years old and admittedly, she is a minor. It is further submitted by learned Additional Standing Counsel for the State that medical examination report is not the conclusive evidence so far commission of crime is concerned it can only used as a corroborative as well the victim herself stated under Section 164, Cr.P.C. statement that the accused petitioner has committed forcible sexual intercourse by putting Bhujali on her neck. It is further pointed out by the learned counsel for the State that the accused was raped under the threat of her life as the accused had threatened her putting knife on her neck. Therefore, he submits that the victim could not have resisted the heinous act of the petitioner under the threat on her life. Relying upon the statement of the victim both the statement recorded under Section 161 as well as Section 164, Cr.P.C., learned counsel for the State submits that the statements of the victim is good enough to come to a conclusion that the allegations prima facie are correct.

8. Considering the nature of allegation, surrounding circumstances and the age of the victim, this Court is not inclined to grant bail to the petitioner. Accordingly, the bail application of the Petitioner is hereby rejected.

9. Further liberty is granted to the Petitioner to move a fresh bail application after examination of the victim in the trial court.

10. With the aforesaid observation, the bail application stands

disposed of.

11. However, observation made hereinabove is confined to the present bail application and the trial court shall not be influenced by any of the observations made hereinabove while conducting the trial.

(A.K. Mohapatra)
Judge

Jagabandhu

