

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.8371 of 2021

Jayanta Mistry

..... Petitioner
Mr. T.K. Mishra, Advocate

-versus-

State of Odisha

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

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

10.03.2022

Order No.

02.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. 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.
3. This is an application under Section 439 of the Criminal Procedure Code.
4. The Petitioner is an accused in G.R. No.194 of 2021 arising out of Umerkote P.S. No.113 of 2021 pending in the court of learned J.M.F.C., Umerkote for commission of offence punishable under Sections 376(1)/506, I.P.C. and subsequently charge-sheeted under Sections 342/506/376(2)(n), I.P.C.
5. The prosecution story as per the F.I.R. lodged by the informant is that on 11.03.2021 at about 6.00 A.M. she was waiting for auto at bus stop for her village, but that time the petitioner came and asked her to where she will go, by saying so, the petitioner

offered for lift in her bike. Thereafter, the petitioner has taken her to nearby jungle and committed rape on her on the point of treat. After that, the petitioner took her to Kalahandi where the petitioner kept her for about four days. Thereafter, she was rescued by the local villagers.

6. Learned counsel for the Petitioner submits that the Petitioner is in custody since 22.08.2021 and in the meantime, investigation has been concluded and charge-sheet has already been submitted by the I.O. He further submits that the victim is a married lady having kids. On the date of occurrence, the victim was waiting for auto at bus stop. He further submits that the occurrence took place on consent and the victim lodged the F.I.R. under pressure of the family members against the petitioner. On perusal of the statement of the victim recorded under Section 161, Cr.P.C. and medical examination report, which is expressed that the occurrence is consensual one.

7. Learned counsel for the Petitioner further submits that as per allegations made in the F.I.R. is false and frivolous and the allegations made in the F.I.R. does not tally with the statement of the victim recorded under Section 161, Cr.P.C. 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.

8. Mr. Nayak, learned Additional Standing 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.

9. Having heard the learned counsels for the parties, considering the nature of allegation, statement of victim recorded under Section 161, Cr.P.C. 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.50,000/- (rupees fifty 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.

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

11. The Bail Application is accordingly disposed of.

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

(A.K. Mohapatra)
Judge