

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.8467 of 2021

Laba Majhi

....

Petitioner

Mr. Jagannath Kamila, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. K.K. Nayak, ASC for State

CORAM:

JUSTICE A.K.MOHAPATRA

ORDER

13.04.2022

Order No.

03. 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. This is an application under Section 439 Cr.P.C. filed by the Petitioner for bail in connection with Nilagiri, Berhampur P.S. Case No.380 of 2020, corresponding to Special Case No.326 of 2020, pending in the file of learned Special Judge, Balasore, for commission of alleged offences under Sections 363/366/376 (2)(n) of I.P.C. and Section 6 of POCSO Act.
3. Heard learned counsel for both the parties. Perused the FIR, Case Diary and statement of witnesses.
4. The prosecution case, in short, is that one Sukanti Singh lodged a written report before the IIC, Berhampur PS with an allegation regarding kidnapping of her minor daughter by the

Petitioner. On the basis of her allegation, Berhampur P.S. case No.380 of 2020 has been registered for commission of offence under Sections 363/366 of IPC read with Section 9 of the Prohibition of Child Marriage Act against the Petitioner. After recovery of the victim girl, the case was turned to offence under Sections 363/366/376(2)(n) of IPC read with Section 6 of POCSO Act. Thereafter, Special Case No.326 of 2020 has been registered in the court of learned Special Judge, Balasore.

5. It is alleged that Informant has a minor daughter. On 3.11.2020, when the Informant and her husband came from work, they came to know that their minor daughter is not in their house and subsequently they came to know that she has been kidnapped by the Petitioner and his parents. It is also alleged that the Petitioner has married to the daughter of the Informant and illegally confined her in their house. When the Informant came to know the facts and went to take back his daughter, she was abused by the parents of the Petitioner. It is also alleged that the Petitioner has shared the joint marriage photograph in the social media.

6. Learned counsel for the Petitioner submits that Petitioner is languishing in jail custody since the date of her arrest, i.e. 11.12.2020. The police after completion of investigation submitted charge-sheet against the Petitioner. It is submitted that as there is no allegation about committing rape to the victim, Section 376(2)(n) of IPC and Section 6 of POCSO Act is not made out against the Petitioner. It is further seen from the

statement of the victim girl recorded under Section 161 Cr.P.C. that she had voluntarily eloped with the Petitioner. Moreover, the Medical Test does not also reveal any sign or symptom of recent sexual harassment against victim, therefore, no case is made out against the Petitioner. It is further submitted that since the Petitioner is a local resident of the area, there is no chance of evading the trial of the case in the event of her release on bail.

7. Learned counsel for the State vehemently objects the prayer for bail of the Petitioner. He also reiterates the same fact that no recent sexual symptoms are found from the medical report. He, however, submits that in the event of release of Petitioner on bail, stringent conditions may be imposed on him.

8. Having regard to the facts and circumstances of the case, considering the nature and gravity of offences alleged and the period of detention of the Petitioner and looking to the age of the Petitioner, this Court is inclined to release the Petitioner on bail on furnishing a bail bond of Rs.30,000/- (Rupees Thirty thousand) with one solvent surety each for the like amount to the satisfaction of the learned court in seisin of the matter subject to the following conditions :

- (i) He shall appear before the trial court on each and every date as fixed by the court;
- (ii) He shall appear before the I.O. on every fortnight of the month, preferably on Sunday at 10 A.M. to 1.00 P.M. and report to the police;

(iii) He shall not tamper with the prosecution evidence;

(iv) He shall not influence or threaten any prosecution witness and cooperate in the investigation;

(v) He shall not leave the jurisdiction of the court without special permission from the court; and

(vi) Violation of any of the above conditions shall entail cancellation of the bail.

9. It is further directed that the court in seisin of the matter to verify the criminal antecedents of the Petitioner and impose any additional condition(s), if situation so warrants. This order shall remain valid in the event the court in seisin of the matter is satisfied that Petitioner has no criminal antecedents.

10. With the above direction, the BLAPL is accordingly allowed.

11. Issue urgent certified copy of this order on proper application.

(A.K. Mohapatra)
Judge