

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.8611 of 2021

Deepak Kumar Malik @ Mallik **Petitioner**
Ms.Sangita Mohanty, Advocate
-versus-
State of Odisha **Opposite Party**
Mr. K.K. Nayak, ASC for State

CORAM:
JUSTICE A.K.MOHAPATRA

ORDER
06.04.2022

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 Kendrapara Sadar P.S. Case No.403 of 2021, corresponding to G.R. Case No.85 of 2021, pending in the file of learned Addl. Sessions Judge-cum-Special Judge, Kendrapara, for commission of alleged offences under Sections 376(2)(n) I.P.C. r/w Section 6 of POCSO Act.
3. Heard learned counsel for the Petitioner, learned counsel for the State and informant, who appeared in person through virtual mode in Court today. Perused the FIR, Case Diary and statement of witnesses.
4. The case of the prosecution, in a nutshell, is that oen Barsharani Mallick (victim) lodged a written report before the IIC, Kendrapara Sadar P.S. to the effect that while she was

prosecuting her study in +2 Arts (2nd year), the Petitioner used to talk with her by posing/making obscene questions from his mobile phone. Last year during lockdown period, the Petitioner came to his village from his work place Bangalore and stayed at home. On the last day of Raja Festival at evening, while the victim was attending call of nature in her Bari land, the Petitioner suddenly came behind her and forcibly gagged her his towel into her mouth and threatened her to remain silent and then committed rape with her and fled away. It is further alleged that the Petitioner also threatened over her mobile phone not to disclose such incident to anyone. If she will do the same, the Petitioner would make her photo viral on social media. It is further alleged that on 13.06.2021 night at around 9.00 PM, the petitioner called the victim to the backside of her house and when she reached there, the Petitioner took her nude photos and forcibly kept physical relationship with her against her will by giving assurance to marry her. Therefore, when the parents of the victim came to know about such relationship, they went to talk with the Petitioner's father and requested for their marriage but the Petitioner and his father refused the same by threatening them.

5. Learned counsel for the Petitioner submits Petitioner is languishing in jail custody since the date of his arrest, i.e. 19.07.2021. Police after completion of investigation submitted charge-sheet against the Petitioner. Learned counsel for the Petitioner submits that both Petitioner and the victim girl had

love relationship. But when it could not turn to marital life, false case has been foisted against him. The allegation also does not supported by the medical evidence. Since the Petitioner belongs to the locality, there is no chance of absconding the process of law or evading the trial of the case.

6. Learned counsel for the State vehemently objects the prayer for bail of the Petitioner on the ground that the victim girl was a minor at the time of occurrence. Accordingly, he prays for rejection of his bail application.

7. The victim girl appeared through virtual mode in Court today and submitted that the Petitioner may be released on bail on such terms and conditions as fixed by this Court. Moreover, the FIR was lodge din the year 2020 when she was 16 years old by now she is a major girl.

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, this Court is inclined to release the Petitioner on bail on furnishing a bail bond of Rs.30,000/- (Rupees Thirty thousand) with one local surety 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 not tamper with the prosecution evidence;

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

(iv) He shall not make contact or try to contact the victim or his family members whatsoever;

(v) He shall provide his present address and mobile number to the I.O. and if any changes therein shall also be intimated to the I.O.;

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

(vii) 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