

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.568 of 2020

Jada @ Basanta Malik

....

Appellant

Mr. Partha Sarathi Nayak, Adv.

-versus-

State of Odisha and Anr.

....

Respondents

Mr. Karunakar Gaya, ASC

(for Res. No.1

)

CORAM:

MR. JUSTICE S.K. PANIGRAHI

ORDER

30.03.2022

Order No.

12. 1. This matter is taken up through hybrid arrangement.
2. This criminal appeal has been filed by the appellant challenging the order dated 02.11.2020 passed by the learned Special Judge, Balasore in Special Case No.235 of 2020 arising out of Soro P.S. Case No.242 of 2020 registered under Section 376AB of the Indian Penal Code, 1860 (hereinafter referred to as “the I.P.C.” for brevity) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “the POCSO Act” for brevity) rejecting the prayer of the appellant to release him on bail in exercise of power under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as ‘the Act’ for brevity).
3. The case of the prosecution is that on 06.08.2020 the complainant Janardan Jena of village Nandigan Samil Kanpur,

in the district of Balasore reported before the Soro Police Station that on 05.08.2020 afternoon at 5.00 P.M. he along with his wife had been to cultivated land. When they returned, they found that in their absence, the appellant came to his house and committed penetrative sexual assault with his minor daughter without her consent. Accordingly, Soro P.S. Case No.242 of 2020 was registered under Section 376AB of the I.P.C. read with Section 6 of the POCSO Act against the appellant.

4. As it appears from the materials available on record, the date of birth of the victim in this case is 18.04.2011. On 05.08.2020, in the absence of victim's parents the appellant stated to have entered into the house of the victim in the evening and committed penetrative sexual assault with the victim. The appellant being the child in conflict with law (hereinafter referred to as "the CCL") was arrested on 10.08.2020 and he was produced before the learned Principal Magistrate, Juvenile Justice Board, Balasore in the aforesaid case. Learned Principal Magistrate, Juvenile Justice Board, Balasore, after preliminary assessment under Section 15 of the Act, transferred the case to the Special Court, Balasore. The CCL approached for bail before the learned Special Judge, Balasore. Learned Special Judge, Balasore vide order dated 02.11.2020 rejected the application for bail of the CCL with the observations that if the CCL would be allowed to be released on bail, he might come in contact with anti-socials and the chances of his social reformation would be less.

5. Challenging the impugned order, learned counsel for the appellant submits that such observations of the court below are baseless and without materials on record. The CCL committed the alleged crime, though heinous one, but without understanding the consequence as revealed from the psycho-social counseling report and the circumstances as revealed from the psycho-social counseling report that due to some previous family dispute, the family of the victim has made false allegation against the CCL, the court below should not have refused the prayer of the CCL, simply observing that if the CCL would be allowed to be released on bail, he might come in contact with anti-socials and the chances of his social reformation would be bleak. In such circumstances, learned counsel for the appellant submits that the CCL deserves to be released on bail extending the benefit of Section 12 of the Act.

6. Learned counsel for the State, on the other hand, raises objection to such prayer advancing the submission that as in the order of the learned Special Judge, Balasore it was observed that if the CCL would be allowed to be released on bail, he might come in contact with anti-socials and the chances of his social reformation would be less, hence, the impugned order does not deserve to be interfered with.

7. Section 12 of the Act mandates that a CCL is required to be released on bail unless there are reasonable grounds for believing that his release would bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends

of justice. Therefore, refusal of bail to a CCL can be made on the existence of circumstances detrimental to his/ her interest or if the same shall defeat the ends of justice. Materials must be there in the record to substantiate the refusal on the aforesaid ground. The same can be visualized from Section 12 of the Act which reads as follows:

“Bail to a person who is apparently a child alleged to be in conflict with law.- (1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person.

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfill the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.”

8. From the impugned order passed by the learned Special Judge, Balasore, it appears that while rejecting the prayer made by the appellant, he has not taken into consideration the consequence of the psycho-social counseling report. The said report also categorically reveals that due to the family dispute, the family of the victim has made false allegation against the CICL. Therefore, rejection of prayer for bail of the CCL by the learned Special Judge, Balasore with the observation that if the CICL would be allowed to be released on bail, he might come in contact with anti-socials and the chances of his social reformation would be less, is without any justifiable material in this regard. The learned Special Judge, Balasore without appreciating the materials in its proper perspective including the psycho-social counseling report has refused for bail of the CCL.

9. From the aforesaid, it appears to this Court that the court below has exercised its jurisdiction vested on it with material irregularity, inasmuch as no justifiable material being there to refuse bail to the CCL, still the same was refused.

10. Therefore, this Court allows this CRLA and sets aside the impugned order passed by the court below. Consequently, the prayer made by the appellant is allowed. The court in seisin over the matter is directed to release the appellant on bail in the

aforesaid case on such terms and conditions as he deems just and proper.

11. With the aforesaid order, this CRLA stands disposed of being allowed.

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

(S.K. Panigrahi)
Judge



BJ