

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.8978 of 2021

Happy @ Maheswar Jena

....

Petitioner

Mr. Amulya Ratna Panda, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. K.K. Nayak, A.S.C. for State

Mr. Sunil Kumar Panda, Advocate for Informant

**CORAM:
JUSTICE A.K.MOHAPATRA**

**ORDER
25.02.2022**

Order No.

04.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).

2. Heard learned counsel for the Petitioner as well as learned counsel for the State. Pursuant to notice, the Informant has entered appearance through her counsel Mr. S.K. Panda. Perused the F.I.R and other relevant records.

3. This is an application under Section 439 Cr.P.C. filed by the Petitioner for bail in connection with Jajpur Sadar P.S. Case No.138 of 2021, corresponding to C.T. Spl. (POCSO) Case No.103 of 2021, pending in the file of learned Additional Sessions Judge-cum-Special Judge, Jajpur, for commission of alleged offences under Sections 363/366/376(2)(n)(3) of I.P.C. read with Section 6 of POCSO Act.

4. Learned counsel for the Petitioner submits that Petitioner has been languishing in jail custody since the date of his arrest, i.e. 19.07.2021 and the investigation of the case has been completed in the mean time. It is further submitted that the statement of the victim girl recorded under Section 164 Cr.P.C. wherein it was disclosed that she has been continuously tortured by her parents, as a result of which, she had telephoned the accused Petitioner, who stated to be her lover and asked her to take her away from the place as there is danger to her life. After fleeing from the place, they took shelter at a friend's house at Bhadrak. It was further stated that with her consent, physical relation has been established. She also refused to give medical text in the said report.

5. Learned counsel for the Informant submits that he has been instructed by his Clint that she has no specific objection and she has left on the Court to take a decision on its own merit.

6. Learned counsel for the State vehemently opposes the bail of the Petitioner on the ground that victim is a minor girl, even though there is consent for sex, but that does not take out the crime part. Accordingly, a prayer has been made not to enlarge the present Petitioner on bail. However, he submits that in the event release of the Petitioner, stringent conditions may be imposed.

7. Having heard learned counsel for the parties, considering the nature and gravity of offences alleged, the period of detention of the Petitioner and the statement of the victim girl recorded under Section 164 Cr.P.C., 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 evidence and cooperate with the investigation; and
- (iv) Violation of any of the above conditions shall entail cancellation of the bail.

8. This Court further observes that the learned trial court may impose any other conditions, if situation so arises.

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

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

(A.K. Mohapatra)
Judge