IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.9488 of 2021

Murali Nial .... Petitioner
Mr.S.N. Mishra-4, Advocate

-Versus-

State of Odisha .... Opposite Party
Mr.G.N. Rout, Addl. Standing Counsel

CORAM:
JUSTICE R.K. PATTANAIK

ORDER

Order No. 12.01.2022

01. 1. This matter is taken up through video conferencing mode.

2. Heard learned counsel for the petitioner and learned counsel for the State.

3. This is an application under Section 439 Cr.P.C. filed by the petitioner for bail in connection with Dharmagarh P.S. Case No.17 of 2021 corresponding to C.T. Case No.12 of 2021 pending in the court of learned Additional Sessions Judge-cum-Special Court, under POCSO Act, Bhawanipatna on the grounds stated therein.

4. Perused the F.I.R. as at Annexure-1, copy of the charge sheet i.e. Annexure-2 and the impugned order dated 11.06.2021 i.e. Annexure-3.

5. Gone through the contents of the F.I.R.

6. Learned counsel for the petitioner submits that initially a case under Section 376-D IPC was registered but subsequently, it has been turned to an offence under Section 376(2)(n) IPC and in

so far as the other accused persons are concerned, they have been granted bail by this Court in BLAPL No.4709 of 2021. It is further submitted that the victim accompanied the present accused, who is alleged of having committed sexual mischief with her and that apart, he is in judicial custody for nearly one year and in the meantime, charge sheet was filed and considering the period of detention and the fact that medical examination does not reveal any trace of sexual violence, the accused should be enlarged on bail with any conditions, which is objected to by the learned counsel for the State on the ground that he is the principal accused responsible for the alleged kidnapping of the minor, who was confined at a place and was subjected to forcible sexual relationship.

7. It is submitted to the Court that in the meantime there has been a compromise between the parties. It is further submitted by learned counsel for the petitioner that the victim had eloped with the accused. The statement of the victim recorded under Section 164 Cr.P.C. is perused. The petitioner has been alleged of having established sexual relationship with the minor victim against her wish. The learned counsel for the petitioner has drawn the attention of this Court to the medical examination report wherein the victim's statement was recorded and she admitted to have been in relationship with the accused since one year. It is claimed that the parties were in a relationship and during that time, the alleged incident took place. It is also claimed that the victim eloped with the petitioner and was thereafter, returned to the village. The victim appears to have been medically examined after about a week but the report does not reveal any external injury. The investigation has been completed as the charge sheet was filed in the month of March, 2021. It is informed to the Court that trial has

not yet commenced and not even the charges have been framed against the petitioner.

8. Having regard to the above facts and the fact that the charge sheet is already filed and taking into account the period of detention which is since 30.01.2021 and regard being had to the circumstances under which the alleged incident took place more over the parties were in relationship for about a year or so which is revealed from the medical examination report of the victim, the Court is inclined to release the petitioner on bail with conditions.

9. Accordingly, it is directed that the petitioner be released on bail on furnishing a bail bond of Rs.40,000/- (rupees forty thousand) with one solvent surety for the like amount to the satisfaction of the learned court below, who shall impose such other conditions, as would be deemed just and proper, in the facts and circumstances of the case.

10. The BLAPL is accordingly disposed of.

11. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020, modified by Court's Notice No.4798, dated 15th April, 2021 and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

(R.K. Pattanaik)
Judge

KC Bisoi