

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.9637 of 2021

Bairagi Mohanty

....

Petitioner

Mr.Kuldeep Mohanty, Advocate

-Versus-

State of Odisha

....

Opposite Party

Mr.G.N. Rout, Addl. Standing Counsel

CORAM:

JUSTICE R.K. PATTANAIK

ORDER

11.01.2022

Order No.

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 Khunta P.S. Case No.222 of 2021 corresponding to C.T. Case No.705 of 2021 pending in the court of learned S.D.J.M., Udala on the grounds stated therein.
4. Perused the F.I.R. as at Annexure-1 and the impugned order dated 05.10.2021 i.e. Annexure-2 besides a copy of the statement of a witness recorded under Section 161 Cr.P.C. is enclosed as Annexure-3.
5. Gone through the contents of the F.I.R.
6. Learned counsel for the petitioner submits that the present accused did not commit any sexual mischief vis-à-vis the victim which is revealed from her statement under Annexure-3 and also Annexure-1. It is further submitted that the victim nowhere alleged

of having been raped during the incident. A reference is made to Annexure-3 to show that the victim was only manhandled and subsequently, molested, as one of the accused persons touched her private part, considering which the learned counsel for the petitioner submits that the present accused having not committed any overt act, should be enlarged on bail with any conditions, which is objected to by the learned counsel for the State on the ground that all the accused persons are responsible for the alleged mischief.

7. Learned counsel for the State referred to the statement of the victim recorded under Section 164 Cr.P.C., wherefrom, it is made to suggest that the victim was picked up, while she was on her way and then was made to lie on the ground and one of the accused persons touched her breast and lifted her wearing apparel and committed the overt act. It is made to understand that the petitioner and another accused were present at the spot by then. In fact, the informant is a police official, who while being on duty found some persons discussing about a video being viraled and thereafter, during investigation, ascertained the involvement of the petitioner and two other accused persons, whose names have been mentioned in the F.I.R. with the allegation that they committed rape on the victim, who was subsequently located and examined. However, from the victim's version under Section 161 Cr.P.C. and also Section 164 Cr.P.C., no allegation of any rape is being made, especially as against the petitioner.

8. Having regard to the above facts, submissions made by the learned counsel for the parties and the fact that the charge sheet has already been filed, in the meantime and taking into account the period of detention vis-à-vis the petitioner, 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.30,000/- (rupees thirty 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