

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3262 of 2022

Padmalochan Patel

.... Petitioner
Mr. J.N. Panda, Advocate

-Versus-

State of Odisha and Another

.... Opposite Parties
Mr. T.K. Praharaj, SC

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
25.11.2022

Order
No.

01.

1. Heard learned counsel for the petitioner and learned counsel for the State opposite party No.1.

2. Prayer in the present case is for quashing of the impugned order dated 15th July, 2022 passed in C.T. Case No.444/56 of 2020-2022 (POCSO) pending in the file of learned A.D.J.-cum-Special Court under POCSO Act, Bhawanipatna on the grounds stated therein.

3. A copy of the FIR i.e. Annexure-1 besides the chargesheet as at Annexure-3 are perused by the Court.

4. Learned counsel for the petitioner submits that the petitioner was on bail but in the meantime, the chargesheet was filed for a higher offence, later to which, the learned Special court has issued summons for his appearance, however, he apprehends remand since because the offence is punishable under Section

376(2)(n) IPC and Section 6 of the POCSO Act. While not pressing the matter on merit, the learned counsel for the petitioner submits that at least a direction should be issued for the petitioner to appear before the learned court below and released on bail subject to any condition. Keeping in view the nature of allegations and circumstances leading to the lodging of the FIR besides the statement of the victim recorded under Section 164 Cr.P.C., a copy which is at Annexure-4. Mr. Praharaj, learned counsel for the petitioner on the other hand submits the petitioner is chargesheeted under Section 376 IPC besides Section 6 of the POCSO Act and the alleged mischief is being claimed by the victim in her statement recorded under Section 164 Cr.P.C. a copy of which is also produced as at Annexure-4.

5. Having regard to the allegations in the FIR and statement of the victim recorded under Section 161 Cr.P.C. as well as Section 164 Cr.P.C., the Court is of the view that the petitioner is required to face the trial as in the meantime, chargesheet is filed. It is not a fit where considering the statement under Section 164 Cr.P.C. of the victim, the Court is to interfere with the criminal proceeding pending before the learned Special court. In other words, the impugned order under Annexure-5 does not call for any interference.

6. Considering the prayer of the learned counsel for the petitioner and notwithstanding the fact that the statement of the victim under Section 161 Cr.P.C. recorded in the year 2020 claims to contradict her version before the Magistrate under Section 164 Cr.P.C recorded almost two years later, the Court is of the view that

the petitioner who is chargesheeted for offences under Section 6 of the POCSO Act besides Section 376(2)(n) IPC should be directed to appear before the learned court below and apply for bail.

7. Accordingly, it is ordered.

8. Consequently, CRLMC stands disposed with a direction to the petitioner to appear before the learned A.D.J.-cum-Special Court under POCSO Act, Bhawanipatna in connection with C.T. Case No.444/56 of 2020-2022 (POCSO) and in case he applies for bail, the court below shall consider the same and thereafter pass appropriate orders as per and in accordance with law.

9. Urgent certified copy of this order be granted as per rules.

(R.K. Pattanaik)
Judge

