

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.9737 of 2021

Chinta @ Chintamani Juanga **Petitioner**
Mr. D.K. Mohanty, Advocate
-versus-
State of Odisha & another **Opposite Party**
Mr. P.K. Rout, A.G.A. for State
Mr. D.K. Rath (Advocate for Informant)

CORAM:
JUSTICE A.K.MOHAPATRA

ORDER
13.07.2022

Order No.

05. 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. Heard Mr. D. K. Mohanty, learned counsel for the Petitioner, Mr. P.K. Rout, learned Addl. Govt. Advocate for the State and Mr. D.K. Rath, learned Advocate appearing for the informant.
3. This is an application Under Section 439, Cr.P.C. for bail filed by the learned counsel for the Petitioner involving offence punishable under Sections 376(2)(n)/376(3)/506, I.P.C. read with Section 6 of the POCSO Act.
4. It is stated by learned counsel for the Petitioner that the Petitioner is in custody since 06.09.2021 and in the meantime investigation has been completed and charge-sheet has been filed in the case. It is further submitted by learned counsel for the Petitioner that the victim and the accused-Petitioner have got married to each other and the victim has given birth to a child. Learned counsel for

the Petitioner further contended that the victim and her mother appeared before the learned court below and submitted that the victim has married to the accused-Petitioner in the meantime and she has given birth to a child.

5. However, on perusal of the impugned order dated 26.10.2021, it appears that the learned court below, while taking into consideration the gravity of the offence and the age of victim girl as well as the decision of the Hon'ble Supreme Court in the case of ***Bima v. Sanchita, (2004) 27 OCR (SC) 909***, rejected the bail application of the Petitioner.

6. It is further contended by learned counsel for the Petitioner that the relationship between the victim girl and the present Petitioner is a consented one and they have married each other. However, the age of the victim is the subject matter of dispute. The court below in its rejection order dated 26.10.2021 has stated that the age of the victim is about 15 years. However, the learned counsel for the Petitioner submits that on the basis of the Medico-Legal Examination Report, the victim is aged 17 years 4 months. Taking into consideration the date of birth, as given in the Medico-Examination Report, it appears that the victim has already attained majority. Therefore, there is no legal impediment to grant bail to the Petitioner.

7. Learned counsel for the Informant on the other hand submits that the Petitioner and the victim have married each other and they are blessed with a child in the meantime. Therefore, the victim does not want to proceed further in the matter and she does not object to the release of the Petitioner on bail.

8. Learned Addl. Govt. Advocate on the other hand vehemently objects to the release of the Petitioner on bail, stating that the allegation made in the F.I.R. is very heinous in nature and there are ample materials on record to show that the Petitioner has forcibly committed the crime on the victim. He accordingly submits that the Bail Application be rejected.

9. Having heard learned counsels for the parties and taking into consideration the facts and circumstances, statement of the victim recorded under Section 164, Cr.P.C. as well as the submissions made by learned counsel for the Informant and furthermore taking into consideration the period of custodial detention of the Petitioner, this Court is inclined to allow the Petitioner to go on bail and accordingly directs that the Petitioner be released on bail by furnishing bail bond of Rs.30,000/- (rupees thirty thousand) with two solvent sureties for the like amount to the satisfaction of the learned Addl. Sessions Judge-cum-Special Judge, Keonjhar in Special Case No.81 of 2021 corresponding to Pandapada P.S. Case No.85 of 2021, on such terms and conditions as deemed just and proper, including the following terms and conditions –

- (i) The Petitioner shall not tamper with the prosecution evidence in any manner whatsoever;
- (ii) He shall not threaten or try to influence any of the prosecution witnesses including the victim girl in any manner;
- (iii) He shall appear before the trial court on the each date fixed by the trial court;
- (iv) Violation of any of the above conditions shall entail cancellation of bail of the Petitioner.

10. The BLAPL is accordingly allowed.
11. Issue urgent certified copy as per rules.

(A.K. Mohapatra)
Judge

S.K.Parida

