

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.14208 of 2022

Santosh Kumar Sahoo

Petitioner

Mr. Aswini Kumar Karmi, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. Debasish Biswal, A.S.C.

CORAM:

JUSTICE CHITTARANJAN DASH

ORDER

22.11.2022

Order No.

02. 1. Heard the learned counsel for the Petitioner and the State.
2. By means of this application, the Petitioner seeks grant of bail under Section 438, Cr.P.C. in apprehension of arrest for his alleged involvement in the offence under Sections 376 (2)(n)/417, I.P.C., in connection with Handapa P.S. Case No.293 of 2021 corresponding to G.R. Case No.1064 of 2021 pending in the court of learned S.D.J.M., Athmallik.
3. It is alleged that on 2nd December, 2021 the complainant-victim aged about 30 years from village Budulimunda, P.S.-Handapa in the district of Angul, lodged a written report informing that she had developed a love affair with the Petitioner who is her close neighbour since ten years. During this period consensually both of them established physical contact. It is further alleged that having got pregnant out of such physical contact when the victim girl requested the Petitioner to get marry her, the Petitioner avoided and did not pay any heed to the request of the Petitioner, the Petitioner got deceived

and dejected. Finding no other alternative, when the victim went to the house of the Petitioner, the Petitioner left the house where-after the family members of the Petitioner did not come to her rescue. On the basis of the report, the police registered the case. While the matter came up for investigation, the Petitioner apprehending arrest moved in the present.

4. It is submitted by learned counsel for the Petitioner that there is absolutely no material to implicate the Petitioner in the offence under Section 376(2)(n), I.P.C. or otherwise, in as much as there is no such incident connecting the present Petitioner vis-à-vis the victim to have taken place. He further submitted that the victim is quite matured and considerably a major person to understand the implications of the actions performed by her and as such there could not be any such incident, that too for the last ten years, as alleged. In such view of the matter, the Petitioner seeks intervention of this Court for consideration of his bail.

5. Learned counsel for the State on the other hand, having obtained the up-to-date Case Diary, placed the statement of the victim recorded under Section 164, Cr.P.C. Perusal of the F.I.R. and the 164, Cr.P.C. statement goes absolutely clear to show that the victim who is major by age could have visualized the consequences of the act alleged, if at to have got into with the Petitioner. Further, the physical contact alleged by the victim girl having continued for years can be termed consensual in nature only. From the material available on record the allegations as to sexual nothing can be attributed prima

facie implicating the Petitioner in the offence under Section 376(2)(n), I.P.C.

6. Be that as it may, having regard to the facts and circumstances, materials appearing in the record, nature of allegation and seriousness and gravity of the offence, while this Court is not inclined to entertain the application of the petitioner, however it is observed that, in the event the Petitioner surrenders and moves for bail before the learned S.D.J.M., Athamallik in the aforesaid G.R. Case within a period of three weeks hence, he shall be admitted to bail on such terms and conditions as would be deemed just and proper by the said court besides the following: –

- (i) The Petitioner shall appear before the I.O. and shall cooperate with the investigation as and when required;
- (ii) He shall also appear before the trial court on each date of trial, without fail, till conclusion of the trial.
- (iii) He shall not threaten, terrorise, ill-treat or harass the Informant and her family members including the prosecution witnesses in any manner whatsoever.
- (iv) Violation of any of any of the conditions shall entail cancellation of bail.

7. The ABLAPL is disposed of accordingly.

(Chittaranjan Dash)
Judge