

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.615 of 2021

Gouri Sankar Behera @ Himansu *Appellant*
Mr. S.K.Baral, Advocate
-versus-
State of Odisha and another *Respondents*
Mr. P.C. Das, ASC for State-Respondent No.1

**CORAM:
JUSTICE A.K.MOHAPATRA**

ORDER
15.03.2022

Order No.

03. 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. This appeal has been filed by the Appellant challenging the order dated 18.09.2021 passed by the learned Presiding Officer, Special Court under the SC & ST (POA) Act, Cuttack, C.T. Case No.141 of 2021, which arises out of Mahila P.S. Case No.83 of 2021, for commission of alleged offences under Sections 328/450/376(2)(j) of IPC read with Section 3(2)(v) of SC and ST (POA) Act.
3. By virtue of the impugned order dated 18.09.2021, the bail application filed by the Appellant has been rejected by the court below. The prosecution case, in brief, is that the Informant lodged an FIR before the Cuttack Mahila Police Station on 13.04.2021 alleging inter alia that the Appellant had gone to her residence to take some books and there he mixed something in the Sprit cold drinks, which the Informant drank. It is further alleged that after drinking the said soft drink, the Informant felt like losing her sense. Thereafter, the accused indulged in sexual activities with the victim girl. At that

moment, the husband of the Informant came and knocked the door, which was locked from inside. The accused Appellant opened the door after seeing the husband of the Appellant, he fled away from the spot. Although the husband of the Informant chased him but he could not catch hold of the Appellant. Thereafter, the husband of the Informant tried to contact him over phone. But he could not contact him. It is further alleged that the Appellant later on admitted his guilt over phone and both sides tried to resolve the issue amicably. It is further submitted that the accused is the friend of the husband of the Informant. Since the matter could not be resolved and the Appellant threatened the husband of the Informant, the present FIR has been lodged for proper investigation of the case.

4. Heard learned counsel for the Appellant as well as learned counsel for the State-Respondent No.1. Respondent No.2-Informant although represented by a counsel. However, learned counsel for the Informant did not appear in the first hour when the matter called. So the matter was passed over. He also did not appear when the matter was called for the second time and the Court was informed by the learned counsel for the Appellant that despite giving intimation, learned counsel for the Respondent No.2 did not appear in the matter. Perused the Case Diary, FIR as well as statement of the witnesses recorded under Section 164 Cr.P.C. of the victim girl and the medical examination report of the victim girl.

5. It is submitted by learned counsel for the Appellant that the Appellant is in custody since 15.09.2021. The investigation of the case is over and the police has already filed charge-sheet in the matter. He further submits that the alleged sexual conduct is with the

consent of both the Appellant and the victim girl. The victim, who is a major girl had developed intimacy with the Appellant. He further submits that some illegal demand was made from the side of the victim, which he could not meet, as a result of which, the Appellant has been falsely implicated in the case.

6. Learned counsel for the State on the other hand submits that considering the allegations made in the FIR and further considering the seriousness and gravity of such allegation, the Court should not show any leniency to the Appellant. He further submits that the victim girl has reiterated same facts in her 164 statement as alleged in the FIR. Therefore a case is made out against the Appellant under the alleged Section of Indian Penal Code. In such view of the matter, learned counsel for the State urged that the bail application of the Appellant should be rejected.

7. On perusal of the medical examination report of the victim, this Court finds that the same does not support the FIR allegation. Although medical examination of the victim girl has been conducted by a doctor of S.C.B. Medical College and Hospital, Cuttack but after examination, the doctor has opined that there is no sign of any recent sexual intercourse. Moreover, the allegation of assault on the chest of the victim as alleged in the FIR is also not corroborated by the medical evidence. Further, the conduct of the victim girl and the circumstances in the present case are not very much convincing.

8. Considering the aforesaid facts and circumstances and on examination of the materials on record and further considering the period of detention in custody, this Court is not in agreement of the view of the learned trial court as expressed in the impugned order

dated 18.09.2021. Accordingly, the impugned order is unsustainable in the eye of law, the same is hereby set aside. Further it is directed that let the Appellant be released on bail subject to furnishing a bail bond of Rs.50,000/- (Rupees Fifty thousand) with one solvent surety for the like amount to the satisfaction of the learned court in seisin of the matter subject to the following terms and conditions:

- (i) While on bail, the Appellant shall not indulge in any other offences;
- (ii) He shall not tamper with the prosecution evidence;
- (iii) He shall not influence or threaten any prosecution witness and cooperate in the investigation;
- (iv) He shall not make any attempt to influence the victim girl and shall stay away from the victim girl, till conclusion of the trial;
- (v) He shall appear before the trial court on each and every date as fixed by the court;
- (vi) He shall not leave the jurisdiction of the concerned court without special permission;
- (vii) He shall provide his address and mobile number and keep inform the police regarding any change in such details till conclusion of the trial;
- (viii) Violation of any of the above conditions shall entail cancellation of the bail; and
- (ix) The trial court may impose any other condition(s), as deem fit and proper.

9. With the above direction, the CRLA is accordingly allowed.

10. Issue urgent certified copy of this order on proper application.

(A.K. Mohapatra)
Judge

U.K.Sahoo

