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IN THE HIGH COURT OF ORISSA AT CUTTACK
BLAPL No.11185 of 2019

Ramesh Khora

....

Petitioner

*Mr.Amlan Mohanty on behalf of
Mr.S.R.Mohapatra, Advocate*

Versus

State of Odisha

....

Opp. party

Mr.G.R.Mohapatra, ASC

**CORAM:
JUSTICE SAVITRI RATHO**

ORDER
04.02.2022

Order No.

06. 1. I have heard Mr. Amlan Mohanty on behalf of Mr.S.R.Mohapatra, learned counsel for the petitioner and Mr. G.R.Mohapatra, learned Addl. Standing Counsel for the State through hybrid mode.
2. This is an application under Section 439 of Cr.P.C. for grant of bail to the petitioner-Ramesh Khora in connection with Jeypore Sadar P.S. Case No.164 of 2019 corresponding to T.R. Case No.71 of 2019 pending in the Court of the learned Addl. Sessions Judge-cum-Special Judge, Jeypore where chargesheet has been filed against the petitioner for commission of offence punishable under Sections 363/376 (2) (n)/376 (3)/294/506/342 of the I.P.C. and Section 6 of the POSCO Act.

3. The petitioner had moved an application for bail before the Court of learned Addl. Sessions Judge-cum-Special Judge, Jeypore_which was rejected on 11.12.2019.

4. The allegation against the petitioner in brief is that when the victim girl aged about 13 years had gone to attend the call of nature, the petitioner gagged her mouth and took her to a nearby bathroom and raped her repeatedly after shutting the door and later allowed her to go home after threatening her not to disclose the incident to anybody.

5. Learned counsel for the petitioner submits that the occurrence took place on 17.09.2019 but the F.I.R. has been lodged on 21.09.2019 after which the petitioner has been arrested on 23.09.2019. There is therefore an unexplained delay in lodging the F.I.R. which casts serious doubt as regards the prosecution case. He further submitted that the F.I.R. has been scribed by somebody else and the knife allegedly used by the petitioner has not been recovered for which the case against the petitioner appears to be suspicious especially in the absence of external injuries on her body. In support of his submissions, he relies on the decisions of *Md. Ali @ Gudu v. State of Uttar Pradesh* reported in (2015) 7 SCC 272 : (2015) 3 SCC CrI.82 and *Dinesh Kumar Maurya vs*

State of Uttar Pradesh reported in **2012(2) ACR 1260**, copies of which he has filed alongwith a memo for perusal of the Court.

6. Mr. G.R.Mohapatra, learned Addl. Standing Counsel opposes the prayer for bail stating that the minor victim has implicated the petitioner in her statement recorded under Section 164 Cr.P.C and her medical examination report supports her allegations . His further submission was that this is not the stage to examine the contentions and decisions relied on by the leaned counsel for the petitioner, which is a matter for trial.

7. In the case of ***Md. Ali @ Gudu (supra)***, while hearing on appeal against an order of conviction, the Hon'ble Apex Court acquitted the appellant as delay of almost three months had not been explained by the prosecution, some vital witnesses had not been examined and the manner of recovery of the prosecutrix had not been explained.

In the case of ***Dinesh Kumar Maurya v. State of Uttar Pradesh*** reported in **2016 (2) ACR 1260**, there was an unexplained delay of three-four days in lodging the FIR and recovery memo of the victim was not available on record and the evidence of the victim was not found credible for which the court acquitted the

accused.

8. I have perused the statement of the victim recorded under Section – 164 Cr.P.C where she has described the manner in which the offence was committed . Her medical examination report reveals presence of injuries on her private parts .

9. It would be trite but necessary to observe that a threadbare analysis of materials are not necessary while considering a prayer for bail .These are to be considered at the time of trial or hearing of the appeal and hence the decisions relied on by the learned counsel for the appellant cannot be considered at this stage and he may rely on them at the time of hearing of the appeal, if so advised . It would be apposite to extract the relevant portion from the decision of the Supreme Court in the case of **Mahipal vs Rajesh Kumar@Polia** reported in **(2020) 2 SCC 118** which is as follows :

“...12 The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straight jacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond

reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused sub-serves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.’....

10. Considering the respective submissions of the learned counsels, the sentence prescribed for the offences , the nature of materials available against the petitioner and the age of the victim girl, I am not inclined to release the petitioner on bail at this stage. The prayer for bail is accordingly rejected.

But the efforts undertaken by Mr.Amlan Mohanty, learned counsel for the petitioner to persuade the Court to release the accused on bail are appreciated.

11 Liberty is granted to the petitioner to move for bail afresh after the victim girl is examined . As the petitioner is stated to be in custody since more than two years , the learned trial court is requested to complete the trial expeditiously.

12. In view of the restrictions due to resurgence of COVID-19 situation, 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 Notice No.4798 dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

Copy of this order be sent to the learned additional Sessions Judge –cum- Special Judge , Jeypore .

Bichi

*(Savitri Ratho)
Judge*

