

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No. 14690 of 2022

Prasant Sethi @ Prasanta

....

Petitioner

Mr. Akash Bhuyan, Advocate

-versus-

State of Odisha

....

Opp. Party

Mr. S. Patra, ASC

CORAM:

JUSTICE CHITTARANJAN DASH

ORDER

20.12.2022

Order No.

- 02.
1. Heard learned counsel for the Petitioner and for the State.
 2. This is an application for bail U/s. 438 Cr.P.C. filed by the Petitioner in apprehension of arrest for his alleged involvement in the offences U/s. 376(2)(n)/109/506/34 of IPC.
 3. It is submitted by learned counsel for the Petitioner that there is no material to implicate the Petitioner under section 376(2)(n) of IPC for the reason that the Informant was not only major but also of a considerable age and could well visualize the consequences of her relationship with the Petitioner, if any. It is further submitted by learned counsel for the Petitioner that the very act of the Informant having physical contact with the Petitioner on several occasion could not have been possible without of her consent and the fact that the Petitioner took the naked photograph of the Informant and extended threat to display the same finds no support from the

materials save and except the allegation and further submits that the exchange of garland giving impression of marriage by the Petitioner to the Informant was nothing but an exaggeration of the fact and as such the Petitioner may be considered for bail.

4. Learned counsel for the State on the other hand vehemently opposed the contentions raised by learned counsel for the Petitioner and submitted that the act alleged by the Informant is grave and heinous and should not be taken leniently while considering the liberty of the Petitioner.

5. In view of the submissions made by the parties and the reference made to the order of the Apex Court passed in Criminal Appeal No. 962 of 2022 by the learned counsel for the Petitioner while the case in hand is examined, Prima-facie it appears that there is material to indict the conduct of the Petitioner. However, keeping in view the age of the Informant, the possibility of a consensual act cannot be ruled out. The further fact as regards the accused to have given an impression of the marriage to the Informant is subject matter of evidence.

6. Keeping in view the submissions of the parties and having gone through the nature of allegations as emerged from the material on record and further the circumstances appearing, the seriousness and gravity of the offences and the view of the Apex Court in similarly placed persons, while this Court is not inclined to grant anticipatory bail, the petitioner is at liberty to surrender before the learned J.M.F.C., Rajnagar in Rajnagar P.S. Case No.243 of 2022 corresponding to G.R. Case No.297 of 2022 within three weeks

from today and moves for bail. In such event the learned court in seisin over the matter shall consider the bail application of the Petitioner in the first hour of the day, strictly on the basis of the materials available on record in its own merit.

7. In case of rejection of the bail application by the learned court, the Petitioner may move for bail before the higher forum in the second hour of the same day. In that event, the higher forum shall consider and dispose of the bail application of the Petitioner on the same day on its own merit.

8. It is made clear that the learned court below shall not be influenced by any of the observations of this court made herein above in any manner. Case diary be made available to the learned courts below as soon as possible to facilitate disposal of the bail application of the Petitioner on the same day.

9. Court has to apply its own wisdom in dealing with the application for bail.

10. The ABLAPL is disposed of.

(Chittaranjan Dash)
Judge

B.K Sahoo/AK Pradhan