

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.10407 of 2021

Sushanta @ Rohit Kumar Das ***Petitioner***
Mr. J. Mohapatra, Advocate

-versus-

State of Orissa ***Opp. Party***
Mr. S.R. Roul, A.S.C.

CORAM:
JUSTICE G. SATAPATHY

ORDER

27.09.2022

Order No.

- 07.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. This is an application U/S. 439 of Cr.P.C. by the petitioner for grant of bail in connection with Special (POCSO) Case No. 07 of 2021 arising out of Chandbali P.S. Case No.18 of 2021 pending in the Court of learned Special Judge (FTSC), Bhadrak for commission of offences punishable under Sections 366/376/306/34 of IPC and U/S. 6 of POCSO Act on the allegations of kidnapping the victim as well as committing rape and aggravated penetrative sexual assault upon her and in the process abetting the commission of suicide of the victim.
 3. In the course of hearing of the bail application, learned counsel for the petitioner submits that the petitioner is an innocent person and he has not committed any crime. It is further submitted that even if the allegations on record are taken into consideration on the face of it, no offence U/Ss.306/376/366 of IPC or U/S. 6 of the POCSO Act are made out against the petitioner since the victim has not been examined in this case nor is there any statement of the victim, upon

whom the offences of rape and aggregative penetrative sexual assault has been committed. Learned counsel for the petitioner further submits that the police after investigation has placed the charge-sheet against the petitioner for offences U/Ss.306/376/366 of IPC as well as U/S. 6 of the POCSO Act but there is hardly any material to find out any prima facie case against the petitioner for these offences.

4. On contrary, learned counsel for the State, in reply, however, admits that the victim has not been examined in this case and the petitioner and deceased was having love affairs but he further submits that the deceased being aged about 17 years was under 18 years and thereby the allegations levelled against the petitioner for committing of sexual intercourse upon a minor amount to rape and aggravated penetrative sexual assault and the petitioner, thereby is not entitled to be released on bail. Learned counsel for the State under these submissions prays to reject the bail application of the petitioner.

5. After having considered the rival submissions of the parties upon perusal of the allegations on record, there appears no dispute about placing of charge-sheet against the petitioner for commission of offences U/Ss.306/376/366 of IPC read with Section 6 of the POCSO Act but admittedly the victim has not been examined in this case. Statements of some witnesses examined in this case indicate about the petitioner and the deceased staying as husband and wife. It is not denied that the petitioner is in custody since 15.01.2021 and in the mean while, one year eight months has already elapsed. The statement of the mother of the deceased also indicates the age of the deceased to be 17 years and the post mortem report discloses the cause of death of the deceased to be on account of poisoning and absence of any external injuries in any form on anywhere on the body of the deceased.

In view of the above facts and taking into considerations the rival submissions advanced on behalf of the parties and the pre-trial detention of the petitioner since 15.01.2021 and keeping in view the importance of the personal liberty of an individual, which is to be protected with utmost care and priority and taking into consideration the other circumstances of this case, especially non-availability of the statement of the victim, this Court considers it proper to admit the petitioner to bail.

6. Hence, the prayer for the bail of the petitioner stands allowed and the petitioner is allowed to go on bail on furnishing bail bonds of Rs.25,000/- with two solvent sureties each for the like amount to the satisfaction of the learned Court in seisin of the case on such terms and conditions as deem fit and proper with further conditions that the petitioner shall attend the trial Court on each date of trial without fail unless his attendance is dispensed with and that he shall not leave the jurisdiction of the trial Court without prior permission till disposal of the case.

7. Accordingly, the BLAPL stands disposed of.

8. Issue urgent certified copy of the order as per Rules.

(G. Satapathy)
Judge

Subhasmita