

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.713 of 2021

Nilanchala Ratha

.... ***Appellant***
Mr.Manas Chand, Advocate

-versus-

State of Odisha &another

.... ***Respondents***
Mr.K.K.Nayak, A.S.C.

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. Heard learned counsel for the appellant as well as learned counsel for the State.
3. Perused the Case Diary, F.I.R. as well as the statements of the witnesses including the statement of the victim recorded under section 164 Cr.P.C.
4. The present appeal has been filed challenging the order dated 03.12.2021 passed by the learned Additional Sessions Judge-cum-Special Judge, Dharmagarh rejecting the prayer for bail of the appellant in C.T.Case No.31 of 2021 (Special Act) arising out of Charmagarh P.S.Case No.171 of 2021 for commission of an alleged offence under sections 376(2)(n),328,506,294 of the Indian Penal Code read with Section 3(1)(v)(s) and 3(2)(v)(va) of S.C. & S.T.(P & A) Act.
5. Prosecution case as revealed from the F.I.R. in short is that the

wife of the informant used to visit the local Santoshi Maa Temple for offering puja where the Petitioner is continuing as the Priest of the temple and during her visit to the temple the Petitioner passed some remarks against the informant and some gesture to the wife of the informant for which reason the informant denied his wife to visit the temple. It is also revealed from the F.I.R. that on 13.11.2021 at about 10 A.M. taking advantage of absence of the informant, the Petitioner had been to the house of the informant and gave assurance to do welfare of her husband by offering some puja, the Petitioner gave some intoxicate thing to the wife of the informant and thereafter committed rape on her, but at that time the informant reached at the spot and somehow found the act from the whole of the door and shouted to the Petitioner to open the door at that time the Petitioner abused the informant by his caste and while trying to cause injuries to the informant by means of a blade the informant's son somehow saved him from assault and thereafter the Petitioner left the place with a threatening to make viral of the nude photographs of the victim which the Petitioner possessed and finally F.I.R. was lodged.

6. Learned counsel for the appellant submits that the appellant is in custody since 14.11.2021 and the investigation of the case has been completed and charge sheet has been filed. He further submits that the alleged sexual act is the result of consent of both the Petitioner as well as the victim. The victim is aged about 41 years of age. She is a married lady having two children. As per the allegation in the F.I.R. the victim lady was visiting to the Petitioner who is a Priest in the local temple to perform puja. Both the Petitioner and the wife of the informant selected her parental house and accordingly the victim went there along with her daughter in law. While they were indulging in sexual activities, the daughter in law

saw the incident and informed the husband of the victim, who immediately came to the spot and rescued her. Considering the allegations and the surrounding circumstances consent of both the Petitioner and the victim the alleged sexual conduct cannot be overruled.

7. Learned counsel appearing for the State on the other hand opposes the bail application considering the immoral conduct of the Petitioner, who has been worked as Priest in the local temple. Therefore, learned counsel for the State submits that no leniency should be shown to the Petitioner and the bail application filed by the Petitioner should be rejected.

8. Considering the nature of allegations, the surrounding circumstances and the period of custodial detention, this Court is inclined to release the Appellant on bail subject to furnishing a bail bond of Rs.30,000/- (Rupees Thirty thousand) with two solvent sureties each for the like amount to the satisfaction of the court in seisin over the matter subject to the following terms and conditions:

- i) he shall not indulge in similar nature of offence.
- ii) he shall not temper with the prosecution evidence and shall not make any attempt to influence or threaten the witnesses in any manner and shall stay away from the victim and shall not cause harassment to the victim..
- iii) Till conclusion of the trial the Appellant shall not be allowed to enter inside the temple and perform any kind of puja in the said temple.
- iv) Violation of any of the terms and conditions shall entail cancellation of bail.

9. In view of the aforesaid observation, the order dated 03.12.2021 passed by the learned Additional Sessions Judge-cum-

Special Judge, Dharmagarh in C.T.Case No.31 of 2021 (Special Act)
is hereby set aside. The appeal is allowed.

RKS

(*A.K. Mohapatra*)
Judge

