

IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLA No.724 of 2021

Rishi Tarua

....

Appellant

Mr. J.K. Panda, Advocate

-versus-

State of Odisha

....

Respondent

Mr. Karunakar Gaya, ASC

CORAM: JUSTICE S.K. PANIGRAHI

ORDER

09.02.2022

Order No.

04. 1. The matter is taken up through hybrid mode.
2. This is an application under Section 101(5) of the Juvenile Justice (Care and Protection of Children) Act, 2015.
3. Heard learned counsel for the appellant and learned counsel for the State.
4. The Appellant-Child in Conflict with Law (CCL) has filed the present appeal challenging the order dated 02.12.2021 passed by the learned Addl. Sessions Judge-cum-Special Judge, Keonjhar in S.T. Case No.44/27 of 2021, arising out of Barbil P.S. Case No 94/2021 for commission of offence under Sections 376 (D) and 394 of the IPC.
5. The facts of the case is that on 03.06.2012 while the victim was getting back to her home, she was abducted by the appellant and the other co-accused in a Scorpio bearing Regd. No. OR-02-BB 5544. They robbed her money and subsequently raped her by taking her to a forest across the river. However, on the next day she managed to escape their confinement.

6. It is submitted on behalf of the appellant-CCL that the bail application of the CCL had been rejected by the learned Addl. Sessions Judge-cum-Special Judge, Keonjhar on the ground of possibility of the commission of similar kind of offence.

7. Learned counsel for the appellant submits that the victim was examined, and she refused to identify the present appellant as the accused. Further, she stated that the police insisted her on signing a written paper and getting her medical examination done. However, she had refused for the examination. Thereafter, she was produced before the Magistrate, her statement was recorded and her signatures were obtained on a form. Furthermore, she was influenced by the police personnel to identify the appellant in the lock-up as the accused, while in reality she was seeing the appellant for the first time. The disposition of the victim clearly implicates the innocence of the appellant. The co-accused has already been acquitted in the present case. The appellant is a young boy of 17 years. He is in judicial custody since 07.06.2021.

8. The social investigation report, as perused by the learned counsel for the State, reflects that the appellant is disciplined and has showed no signs of violence during his stay at the observation home.

9. Furthermore, learned counsel for the appellant placed reliance on the order of the Supreme Court, vide Writ Petition (Civil) No(s) 4 of 2020. The case was taken up suo motu by the Hon'ble Apex Court in view of the COVID-19 pandemic, for the interest of all the children who fall within the ambit of Juvenile Justice (Care and

Protection of Children) Act, 2015. In the said order, the Hon'ble Apex Court has directed all the JJBs and Children's Courts to consider the fate of the custody of a child in light of their best interest, health and safety concern, especially during the pandemic. The Hon'ble Apex Court succinctly held that:-

“Children alleged to be in conflict with law, residing in Observation Homes, JJB shall consider taking steps to release all children on bail, unless there are clear and valid reasons for the application of the proviso to Section 12, JJ Act, 2015.21.

10. Considering the above submissions made and the directions of the Hon'ble Supreme Court, it is directed that the appellant-CCL-Rishi Tarua be released on bail by the Additional Sessions Judge-cum-Special Judge, Keonjhar in the aforesaid case with some stringent terms and conditions as the court deem fit and proper. Additionally, the parents of the CCL are directed to take his proper care and handle the matter at hand sensitively. Further, ensure his attendance with the Juvenile Justice Board for the purpose of investigation.

11. Accordingly, the CRLA is disposed of.

12. Urgent certified copy of this order be granted on proper application.

(S.K. Panigrahi)
Judge

PCD