

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.11192 of 2021

Happy Gochhayat

....

Petitioner

Mr. Tara Prasad Mohapatra, Advocate

-versus-

State of Odisha and another

....

Opposite Parties

Mr. P.C. Das, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

06.07.2022

Order No.

02.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner and learned counsel for the State. Perused the F.I.R., case diary, the statement of the witnesses and other relevant documents on record.
4. This is an application under Section 439 of the Criminal Procedure Code.
5. Despite notice issued on the informant through Police, none appears on behalf of the informant when the matter is called.
6. The petitioner is an accused in Special G.R. Case No.74 of 2021 corresponding to T.R. Case No.100 of 2021 arising out of Delanga P.S. No.156 of 2021 pending in the court of learned Additional District Judge-cum-Special Court under POCSO Act, Puri for commission of offence punishable under Sections

363/376(2)(n)(3), I.P.C. read with Section 6 of the POCSO Act.

7. One Mitu Mallick, lodged F.I.R. before the Officer-in-Charge of Delanga Police Station on the basis of which Delanga P.S. Case No.156 of 2021 was registered for commission of offences under Section 363, I.P.C. against the unknown person and subsequently registered under Sections 363/376(2)(n)(3), I.P.C. read with Section 6 of the POCSO Act

On receipt of such F.I.R. G.R. Case No.428 of 2021 was registered for commission of above said offences pending in the court of learned J.M.F.C. Pipili against the accused person.

8. Learned counsel for the petitioner submits that the petitioner is in custody since 28.07.2021 and in the meantime, investigation has been concluded and charge-sheet has already been submitted by the I.O. Further, learned counsel for the petitioner submits that the daughter of the informant was in love relation with the present petitioner and when the family member had beaten her, the victim eloped with the petitioner out of her own volition. As per the statement of the victim recorded under Section 164, Cr.P.C., she has categorically stated the entire incident and that she left her parental house out of her own volition. It is also submitted that the petitioner has not kidnapped the victim.

9. Further, learned counsel for the petitioner submits that as per allegations made in the F.I.R. is false and frivolous and as per statement of the victim recorded under Section 164, Cr.P.C., the allegation has not made against the petitioner and also further, learned counsel for the petitioner submits that there is no scope for absconding or fleeing away from the hands of the justice, as the petitioner is a permanent resident of the locality.

10. Learned counsel for the State, vehemently, opposes the prayer for bail of the petitioner on the ground that the alleged crime is heinous in nature. Therefore, he prays for rejection of the bail application of the Petitioner. He also submits that in the event the petitioner released on bail, he might threaten / influence the prosecution witnesses particularly the victim. Further, he submits that in the event this Court is inclined to release the petitioner on bail, some stringent terms and conditions may be imposed and that he does not dispute the statement of the victim recorded under Section 164, Cr.P.C.

11. Having heard the learned counsels for the parties, considering the nature of allegation, statement of victim recorded under Section 164, Cr.P.C., materials are available on record and the period of custodial detention of the petitioner, it is directed that let the petitioner be released on bail on furnishing a bail bond of Rs.30,000/- (rupees thirty thousand) with one local solvent surety for the like amount to the satisfaction of the learned court in seisin over the matter subject to conditions that :-

- I. The petitioner shall not be involved in any offence of similar nature;
- II. He shall not tamper with the prosecution evidence or make any attempt to threaten or influence the witnesses especially the victim or her family members in any manner whatsoever;
- III. He shall not make any default in attending the court during trial on each date; and
- IV. He shall not make any attempt to contact the victim and shall stay away from the victim and

her family members.

Violation of any of the terms and conditions shall entail cancellation of bail.

12. It is open for the court in seisin over the matter to impose other conditions may deem just and proper.

13. The Bail Application is accordingly disposed of.

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

(A.K. Mohapatra)
Judge

Jagabandhu

