

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.746 of 2021

Durga Charan Behera

....

Appellant

Mr.Pulakesh Mohanty, Advocate

-versus-

State of Odisha &another

....

Respondents

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

Ms.S.Mohanty, Advocate for R-2.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

12.04.2022

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 Additional Standing Counsel for the State.
 3. Pursuant to the notice, Ms.Mohanty, learned counsel appears for Respondent No.2. Perused the case records, statements of the witnesses and the Case Diary.
 4. This appeal is directed against the order dated 30.07.2021 whereunder the bail application of the appellant has been rejected by the learned Special Court under SC & ST (POA) Act, Cuttack.
 5. The prosecution case as revealed from the F.I.R. in short is that on 20.07.2021 while she was reading in Class-IX at village Mahulia the present appellant of the same village had one sided love with her. Then her marriage was held in village Jajpur and when she

came to Mahulia the appellant had committed sexual assault near their village pond since years back and also further kept physical relationship with her repeatedly with assurance to marry her, as a result she became pregnant and blessed with a male child as well as terminated her pregnancy twice. When the appellant insisted to marry her she denied and also his family members abused her aspersing her case and assaulted her and threatened for dire consequence.

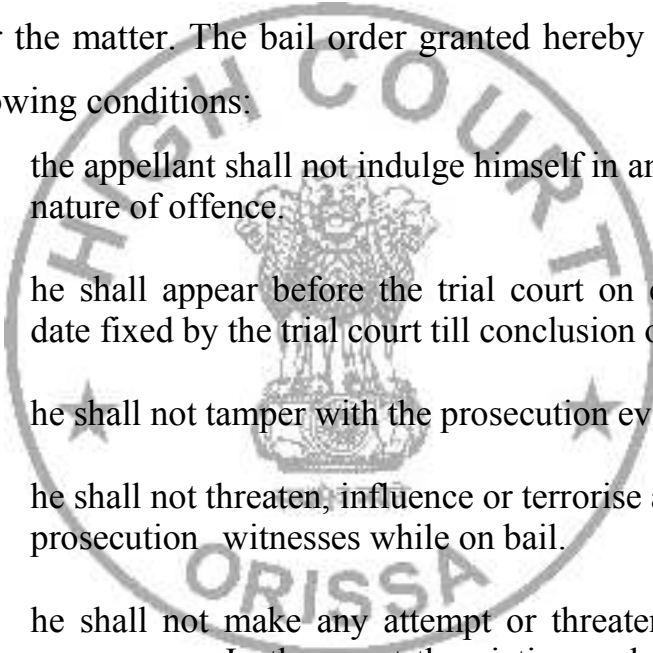
7. It is submitted by the learned counsel for the appellant that the appellant is in custody since 21.07.2021 and in the meantime investigation has been completed and charge sheet has been filed. Further, it is submitted by the learned counsel for the appellant that that the victim is aged about 26 years whereas the appellant is aged about 20 years. Learned counsel for the appellant further submits that the victim is a married lady and despite that there is sexual relationship with the appellant for last couple of years. During their relationship the victim blessed with a male child. It is also submitted by the learned counsel for the appellant that the appellant is aged about 20 years and keeping in view the said fact, he urges to release the appellant on bail and in the event the appellant is released on bail he shall abide by the terms and conditions that may be imposed by this Court.

8. Learned Additional Standing Counsel on the other hand opposes the prayer for bail on the ground that the allegations in the F.I.R. are serious in nature even though both the parties to the alleged occurrence had their sexual relationship with consent..

9. Ms.Mohanty, learned counsel appearing for the informant although raised objection to the bail application she submits that the victim gave birth to a male child and she has burden to maintain the

child. Therefore, in the event the Court is inclined to release the appellant on bail, stringent conditions may be imposed and the appellant be directed to pay maintenance to the child who is staying with her at the moment.

10. Considering the aforesaid submissions and keeping in view the surrounding facts and circumstances of the case and considering the custodial detention as well as the age of the appellant, 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. The bail order granted hereby further subject to the following conditions:

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- i) the appellant shall not indulge himself in any similar nature of offence.
 - ii) he shall appear before the trial court on each and every date fixed by the trial court till conclusion of trial.
 - iii) he shall not tamper with the prosecution evidence.
 - iv) he shall not threaten, influence or terrorise any prosecution witnesses while on bail.
 - v) he shall not make any attempt or threaten the victim in any manner. In the event the victim made any complaint before the Police, it is open for the trial court to issue fresh NBW against the appellant and take the appellant back to custody. In such event this order shall stand revoked.
 - vi) he shall pay a monthly maintenance of Rs.2000/- (rupees two thousand) towards the son of the victim till conclusion of trial.

11. Accordingly the impugned order dated 30.07.2021 passed by the learned Special Court under SC & ST (POA) Act, Cuttack in C.T.Case No.114 of 2021 is hereby set aside and the appeal is allowed subject to

the aforesaid direction.

12. The CRLA is accordingly disposed of.
13. Issue urgent certified copy as per Rules.

RKS

(*A.K. Mohapatra*)
Judge

