

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.747 of 2021

Ritesh Mahakud

....

Appellant

Mr.Sumit Sekhar Pattanaik,Advocate

-versus-

State of Odisha and another

....

Respondents

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

Mr.A.S.Paul for R-2.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

10.05.2022

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.
3. This is an appeal filed under Section 14(A)(2) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.
4. The present appeal is directed against the order dated 22.11.2021 passed by the learned Additional Sessions Judge, Athamalik in rejecting the bail application of the appellant in connection with Kishorenagar P.S.Case No.95 of 2021 corresponding to C.T.(Spl) Case no.13 of 2021 pending in the Court of the learned Additional Sessions Judge, Athamallik for alleged commission of offences under Section 376(2)(n), 417 of the Indian Penal Code and under Section 3(1) (w)(i) and 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) act, 1989.
5. The prosecution case in brief is that the appellant kept physical

relationship with the complainant with false assurance of marriage. It is also alleged in the F.I.R. that the appellant and the complainant were in a relationship for more than six years. It is also alleged in the F.I.R. that on 03.07.2021 the appellant called the complainant to the village bridge and committed rape on her without her consent. The complainant told the appellant to marry her but the appellant refused to do so.

6. It is submitted by the learned counsel for the Appellant that the appellant is in custody since 06.07.2021 and in the meantime investigation of the case has been concluded and charge sheet has been submitted. Learned counsel for the appellant relying upon the statement of the victim submits that the victim is aged about 24 years of age and she has admitted that she was having love relationship with the appellant since last six years and they had physical relationship on many occasions earlier. It is further submitted by the learned counsel for the appellant that when the marriage did not materialized for some reason, the victim has lodged the F.I.R. to harass the appellant and to compel him to marry her. He further submits that since the appellant is a local resident having his immovable properties, there is no chance of his absconding or fleeing away from the hands of justice. Further in the event the appellant is released on bail he will appear before the trial court on each date of posting of the case and he shall abide by any terms and conditions that may be imposed by this Court.

7. Learned Additional Standing Counsel on the other hand opposes the prayer for bail of the appellant on the ground that the allegation made in the F.I.R. is serious in nature. He further submits that the statement of the victim recorded by the Police clearly makes out a case of 376 of the Indian Penal Code.

8. Mr.Paul, learned counsel appearing on behalf of Respondent No.2 strongly opposes the prayer for bail of the present appellant. It is submitted by Mr.Paul that the appellant had promised the victim to marry and accordingly they had physical relationship before marriage. Though they had sexual relationship for several years finally the appellant has abandoned the victim saying that the victim belongs to tribal community. On such submission, Mr.Paul, learned counsel for the Respondent No.2 urges that the bail application of the appellant be rejected.

9. Having heard learned counsel for the parties and considering the rival contentions of the parties and further considering the surrounding facts and circumstances of the case and taking into consideration the period of custodial detention and the nature and gravity of the offence, this Court is inclined to release the appellant on bail and the appellant be released on bail in the aforesaid case subject to the appellant furnishing a bail bond of Rs.50,000/- (Rupees Fifty thousand) with two local solvent sureties each for the like amount to the satisfaction of the learned court in seisin over the matter subject to the following terms and conditions:

- i) he shall appear before the concerned Police Station once in a week preferably on fortnight between 10 A.M. to 1 P.M. till conclusion of trial.
- ii) shall cooperate with the trial of the case and shall appear in trial court on each and every date to which the case is posted.
- iii) shall not indulge in any offence of similar nature
- iv) shall not tamper with the prosecution evidence while on bail.
- v) shall not influence or threaten any prosecution evidence

while on bail.

- vi) shall not approach the victim girl in any manner.

In the event the appellant has any kind of approaches to the victim, it is open for the victim to approach the learned court below for cancellation of bail and in such event it is open for the court below to cancel the bail and issue N.B.W. against the appellant and take back to judicial custody.

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

9. The impugned order dated 21.11.2021 passed by the learned Additional Sessions Judge, Athamallik in C.T. (Spl.) Case No.13 of 2021 is hereby set aside.

10. With the aforesaid observation the appeal is allowed without cost.

11. Issue urgent certified copy as per Rules.

RKS

