IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 7633 of 2024

Rohit Harijan ….. ***Petitioner***

Mr. Rohit Mahato, Advocate

Vs.

State of Odisha ….. ***Opp. Party***

Mr. Satyabrata Panda, ASC

CORAM:

JUSTICE SAVITRI RATHO

ORDER

18.12.2024

Order No.

07.

(Through hybrid mode)

1. This is the second application of the petitioner under Section 439 of Cr.P.C. in this Court in connection with Jeypore Mahila P.S. Case No.133 of 2023 corresponding to G.R. Case No.1327 of 2023, pending in the file of the learned Addl. Sessions Judge-cum-Spl. Court under POCSO Act, Jeypore registered under Sections 363, 366, 376 (2) (n), 313 of IPC read with Section 6 of the POCSO Act. Chargesheet dated 25.01.2024 has been filed under Sections 363, 366, 376 (2) (n) of IPC read with Section 6 of the POCSO Act.

2. Heard Mr. Rohit Mahato, learned counsel for the petitioner and Mr. Satyabrata Panda, learned Additional Standing Counsel.

3. The informant (mother of the victim) had appeared on virtual mode from the Jeypore Mahila Police Station and submitted that the victim is pursuing her studies staying in hostel and she does not

want to marry the petitioner. She also submitted that after the petitioner was released on interim bail he was trying to compel the victim to marry him. She submits that if the petitioner is released on bail, he is likely to harass the victim further.

4. BLAPL No. 191 of 2024 filed by the petitioner earlier had been disposed of on 13.02.2024 granting four months interim bail to the petitioner.

5. After expiry of the period, the petitioner has surrendered in custody on 13.06.2024 and moved the learned court below for bail, but his prayer for bail has been rejected on 12.07.2024. In the rejection order, it is stated that only the victim has been examined in the case.

6. Mr. Rohit Mahato, learned counsel for the petitioner submitted that the petitioner is in custody since one year (06.12.2023). He also submitted that the victim and her mother have been examined in the trial and perusal of the deposition of the victim would reveal that the petitioner and the victim were in love and the victim had eloped with him. He further submits that as per their custom Udulia, the petitioner and the victim had stayed in the house of the petitioner but due to some matrimonial dispute, the victim

went back to her house and she is now refusing to return to his house. Her mother lodged F.I.R. against the petitioner probably with a view to get compensation. He also submitted that after he was released on interim bail, pursuant to order passed in BLAPL No. 191 of 2024 he had made attempt for conciliation with the victim but on account of non-cooperation of her mother, nothing materialized. He further submits that the petitioner has not misused the liberty granted to him while granting him interim bail and has surrendered in time. He finally submits that as the victim and her mother (informant) have already been examined in the trial, no useful purpose will be served by detaining the petitioner in custody any further as that would amount to pre-conviction detention.

7. Mr. Satyabrata Panda, learned Additional Standing Counsel opposes the prayer for bail stating that the victim was a minor on the date of occurrence, so the submission that she had left her house voluntarily with the petitioner in accordance with their custom Udulia, is of no consequence. Referring to the case diary and the statements/depositions of the victim and her mother who have been examined as P.W.1 and P.W.2, he submits that the offence under Section 376 (2) (n) of Cr.P.C. is clearly made out against the petitioner as the victim is a minor. As the victim who had become

pregnant was given some medicines by the petitioner to abort her pregnancy, the offence under Section 313 of Cr.P.C. is also made out against him. He also submits that apart from ill-treating the victim, the petitioner was compelling the victim to change her religion. He finally submits that as per the decision of the Hon'ble Supreme Court in the case of ***X vrs. State of Rajasthan & Another (decided on 27.11.2024 in Special Leave Petition (Criminal) No. 13378 of 2024)***, since trial has started the petitioner should not be released on bail.

8. In the case of ***X vrs. State of Rajasthan & Another*** (supra), the Hon'ble Supreme Court has held as follows:

> *"14. Ordinarily in serious offences like rape, murder, dacoity, etc., once the trial commences and the prosecution starts examining its witnesses, the Court be it the Trial Court or the High Court should be loath in entertaining the bail application of the accused.*
>
> *15. Over a period of time, we have noticed two things, i.e., (i) either bail is granted after the charge is framed and just before the victim is to be examined by the prosecution before the trial court, or (ii) bail is granted once the recording of the oral evidence of the victim is complete by looking into some discrepancies here or there in the deposition and thereby testing the credibility of the victim.*

16. We are of the view that the aforesaid is not a correct practice that the Courts below should adopt. Once the trial commences, it should be allowed to reach to its final conclusion which may either result in the conviction of the accused or acquittal of the accused. The moment the High Court exercises its discretion in favour of the accused and orders release of the accused on bail by looking into the deposition of the victim, it will have its own impact on the pending trial when it comes to appreciating the oral evidence of the victim. It is only in the event if the trial gets unduly delayed and that too for no fault on the part of the accused, the Court may be justified in ordering his release on bail on the ground that right of the accused to have a speedy trial has been infringed.

17. In the case on hand, the victim is yet to be examined. Her mother who, according to the case of the prosecution, is an eye-witness has also not been examined so far. The High Court seems to have looked into few discrepancies in the FIR compared to the statement of victim recorded under Section 164 of the Code. This could not have been a good ground to exercise discretion in favour of an accused in a serious offence like rape."

9. I do not consider it proper to discuss the evidence of the victim in the trial as that may influence the learned trial court before whom the trial is pending.

10. But considering the nature of allegations against the petitioner who has remained in custody since one year (06.12.2023), as the victim has already been examined in the trial and the petitioner has voluntarily surrendered in court below after expiry of the period of interim bail, I am inclined to allow the prayer for bail of the petitioner.

11. The petitioner-Rohit Harijan shall be released on bail on such terms and conditions as may be fixed by the learned Court below in seisin over the matter, including the following conditions:

(i) He will not commit any offence while on bail.

(ii) He will not threaten or try to influence the prosecution witnesses or tamper with prosecution evidence.

(iii) He will remain present in Court on each date it is fixed for trial.

Violation of any condition (s) will entail in cancellation of bail.

12. The BLAPL is accordingly allowed.

13. No observation in this order should influence the trial court as it has been made for the purpose of consideration of the bail application.

Signature Not Verified
Digitally Signed
Signed by: PUSPANJALI MOHAPATRA
Reason: Authentication
Location: Orissa High Court
Date: 06-Jan-2025 15:05:14

puspa

(Savitri Ratho)
Judge