

(2022) 01 OHC CK 0164

In the Orissa High Court

Case No : Criminal Appeal No. 486 Of 2021

Abhi @ Abhaya Pradhan

APPELLANT

Vs

State Of Orissa

RESPONDENT

Date of Decision : 24-01-2022

Acts Referred:

Code of Criminal Procedure, 1973 — Section 164
Indian Penal Code, 1860 — Section 34, 294, 323, 354, 354A, 354B, 354B, 506, 509
Protection of Children from Sexual Offences Act, 2012 — Section 12
Scheduled Castes And The Scheduled Tribes (Prevention Of Atrocities) Act, 1989 —
Section 3(1)(r), 3(1)(s), 3(1)(w)(i), 3(2)(va)

Citation : (2022) 01 OHC CK 0164

Hon'ble Judges : Savitri Ratho, J

Bench : Single Bench

Advocate : B.P.Pradhan, K.K.Nayak

Final Decision : Allowed

Judgement

Â Savitri Ratho, J

1. I have heard Mr.B.P.Pradhan, learned counsel for the appellant and Mr.K.K.Nayak, learned Addl. Standing Counsel through hybrid mode.

2. Although notice had been issued to the Respondent No.2 vide order dated 01.10.2021 through the I.O. but none has appeared on her behalf.

3. This is an application for grant of bail to the appellant-Abhi @ Abhaya Pradhan in connection with Banpur P.S. Case No.308 of 2019 corresponding

to T.R. Case No.653 of 2019 pending in the Court of the learned Addl. Sessions Judge, Bhubaneswar registered against the appellant for commission

of offences punishable under Sections 354-B/354-D/294/323/506/34 of I.P.C. read with Section 12 of POCSO Act and Section 3 (r) (s) of S.C. &

S.T. (POA), Act, 1989. Charge sheet dated 31.07.2021 has been submitted in

this case under Section 341/294/323/354/354(A)/354 (D)/506/509 of the

I.P.C. read with Section 12 of the POCSO Act and Section 3 (1) (r)/3 (1) (s)/3 (1) (w-i)/3/2 (va) of S.C. & S.T. (POA) Act.

4. The prayer for bail of the appellant has been rejected by order dated 24.08.2021 passed by the learned Addl. Sessions Judge, Bhubaneswar.

5. The brief facts of the case are that on 30.10.2019 at about 6.30 P.M, while the minor daughter of the informant, namely, Mamata Nayak aged

about 17 years, student of +2 (2nd year) Mahila College, Banpur was returning to home from tuition, on the way near Khilamunda Temple, the present

appellant along with his two friends stopped her and asked for her mobile number. When she denied to provide her mobile number, the present

appellant along with others abused her in filthy language and tried to disrobe her with an intention to commit sexual act and thereafter they assaulted

her. Due to said assault, she sustained some injuries on her body including face (bleeding from nose).

6. Learned counsel for the petitioner submits that it is revealed from the injury report that the victim girl has sustained one abrasion on her right side

neck and said injury is simple in nature. In her statement recorded under Section 164 Cr.P.C., she has not implicated the petitioner to have committed

the offences under Sections 354/354-A/354-D/506/509 of I.P.C. against the appellant. That apart, there is no material to show that the present

appellant has uttered the caste of the victim girl. Therefore, Section

3 of S.C. & S.T. (P.A.) Act is not made out. Since investigations have been completed in this case, no useful purpose will be served by detaining the

petitioner in custody.

7. Mr. K.K.Nayak, learned Addl. Standing Counsel vehemently opposed the prayer for bail stating that the appellant has assaulted the victim girl and

injured her. He further submits that if he is released on bail, he may abscond from the process of justice as he was avoiding arrest and could only be

arrested only on 31.07.2021.

8. I have perused the statement of the victim recorded under Section 164 Cr.P.C. and the injury report. She has stated that she made allegation

against the appellant as she could not recognise the other accused. The injuries sustained by her are stated to be simple in nature.

9. Considering the submissions made by the respective parties and nature of

allegations, I am inclined to allow this appeal and the prayer for bail.

10. Let the appellant- Abhi @ Abhaya Pradhan be released on bail in the above noted case 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 indulge in any criminal activity while on bail.

(ii) He will not threaten or try to influence prosecution witnesses.

(iii) He will report before the Banpur Police Station between 4.00 p.m. to 6.00 p.m. on the first alternate Monday of every month for a period of three months.

(iv) He will appear before the trial court on each date fixed for trial.

11. Violation of any condition will entail in cancellation of bail.

12. No observation in this order shall be construed as an expression on the merits of the case.

13. The CRLA is accordingly allowed.

14. Copy of this order be sent to the IIC Banpur Police Station.

15. In view of the restrictions due to resurgence of COVID-19 situation, learned counsel for the parties may utilize a printout of the order available in

the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's

Notice No.4587, dated 25th March, 2020, modified by Notice No.4798 dated 15th April, 2021, and Court's Office Order circulated vide Memo

Nos.514 and 515 dated 7th January, 2022.

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