
(2021) 07 OHC CK 0066
In the Orissa High Court
Case No : Bail Application No. 8198 Of 2020

Bhagirathi Mallick

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 07-07-2021

Acts Referred:

Indian Penal Code, 1860 — Section 376(2)(f)(n), 506
Protection of Children from Sexual Offences Act, 2012 — Section 6

Citation : (2021) 07 OHC CK 0066

Hon'ble Judges : S. Pujahari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S. Pujahari, J

1. The petitioner being in custody in C.T. No.13 of 2019 corresponding to Bamunigaon P.S. Case No.8 of 2019 pending in the court of the Addl.

District & Sessions Judge-cum-Special Court under the POCSO Act, Phulbani, has filed this application for his release on bail. The petitioner is facing

his trial in the aforesaid case being charged under Sections 376(2)(f)(n)/506 IPC read with Section 6 of the POCSO Act.

2. The prosecution allegation is that when the victim, who was a student of Class-IX and aged about 15 years, had been to her Aunt's house in the

summer vacation, the brother-in-law of her Aunt ravished her and also extended threat to the victim not to disclose the same to anyone. As it appears

due to such sexual assault on her, the victim became pregnant and when her mother came to know about such pregnancy of her daughter, she asked

her daughter as to who was the author of the same and the victim disclosed about the incident. As such FIR was lodged and the petitioner being

arrested in the aforesaid case is in custody since 2.2.2019. The prayer for bail of the petitioner was earlier rejected by this Court on merit considering

the materials appearing against the petitioner vide order dated 8.8.2019.

3. Learned counsel appearing for the petitioner would submit that since the trial of the case is not progressing for more than two years, the petitioner

deserves to be released on bail more particularly when there is nothing on record to suggest that he would abscond and/or tamper with the prosecution

evidence, if released on bail.

4. Per contra, learned counsel for the State vehemently opposes the prayer for bail of the petitioner. According to the learned counsel for the State,

the offence under Section 6 of the POCSO Act being heinous and serious in nature and prescribing imprisonment for life on conviction, circumstances

in which the offence stated to have been committed, the petitioner does not deserve to be released on bail more particularly when there is no change

in circumstance since his earlier prayer for bail was rejected by this Court vide order dated 8.8.2019.

5. As it appears the offence alleged is heinous and serious in nature and the punishment provided is also stringent one, so also the report of the Addl.

Sessions Judge, Phulbani reveals that the delay in disposal of the case is not attributable to the prosecution. Incriminating materials are also available

against the petitioner indicating his involvement in the offence alleged and the petitioner also extended threat to the victim not to disclose the same to

anyone as such the victim did not disclose the incident to anyone till she became enceinte was known to her mother. In such premises, the

petitioner's release on bail is likely to have serious impact on the fair trial.

6. On consideration of the aforesaid facts, especially nature of accusation, heinousness and seriousness of the offence alleged and stringency of

punishment on conviction, character of incriminating materials available against the petitioner, coupled with the fact that the release of the petitioner

would seriously impact a fair trial, this Court is of the view that the petitioner does not deserve to be released on bail.

7. Accordingly, the BLAPL stands rejected.

8. As the restrictions due to resurgence of COVID-19 situation are continuing, 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 as modified by Court's Notice No.4798, dated 15th April, 2021.

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