

(2022) 03 OHC CK 0141

In the Orissa High Court

Case No : Criminal Appeal No.320 Of 2021

Himadri Malaya Mangaraj @ Raju

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 22-03-2022

Acts Referred:

Code of Criminal Procedure, 1973 — Section 164
Indian Penal Code, 1860 — Section 34, 109, 212, 343, 363, 366, 376(1), 376(2)(n)
Protection of Children from Sexual Offences Act, 2012 — Section 6, 17
Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 — Section 3(1)(xii), 3(2)(v), 3(2)(va)

Citation : (2022) 03 OHC CK 0141

Hon'ble Judges : A.K.Mohapatra, J

Bench : Single Bench

Advocate : S.K. Dalai, M.K. Mohapatra, S.L. Pattanaik

Final Decision : Allowed

Judgement

A.K.Mohapatra, J

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. Heard learned counsel for the Appellant, learned counsel for the State-Respondent No.1 and learned counsel for the Informant-Respondent No.2.
3. Pursuant to direction of this Court dated 25.02.2022, the 164 statement of the victim girl has been recorded again. Learned counsel for the State files certified copy of the 164 statement in Court today, the same is taken on record.
4. This appeal has been filed by the Appellant challenging the order dated 10.05.2021 passed by the learned Addl. Sessions Judge -cum-Special Court under POCSO Act, Bhawanipatna in C.T. No. No.98/30 of 2021, arising out of Mandanpur P.S. Case No.51 of 2021 for commission of alleged offences under Sections 363/366/ 343/376(2)(n)/376(1)/109/212/34 of I.P.C. r/w. Section 6/17 of the POCSO Act and Sections 3(1)(xii)/3(2)(va) and Sections 3(2)((v) of SC &

ST (POA) Act, rejecting the bail application filed by the Appellant.

5. The prosecution case in brief is that the Respondent No.2 lodged a written report before the IIC, Madanpur Police Station alleging therein that on 7.3.2021 night at about 11 P.M. his daughter Alaka Naik, aged about 15 years was absent from his house. In her absence, he searched his daughter all probable places as well as relative house but could not trace her. He contacted with his distance relatives over phone but could not find her daughter and resulted the present FIR.

6. It is submitted by learned counsel for the Appellant that he is no way connected with the case so far as the alleged offences are concerned. It was further submitted that he has been falsely implicated in this case due to previous enmity and ill-will with the informant's group. With some ulterior motive, the present case has been foisted against the Appellant. However, it is submitted that in the event of bail, he shall abide by any terms and conditions as fixed by this Hon'ble Court or as fixed by the learned trial court.

7. Learned counsel for the Informant draws attention of this Court to the 164 statement of the victim girl wherein she has stated that the accused (Himadri Malaya Mangaraj) is a good teacher and whenever she has any difficulty in any subject, she takes help of Mangaraj Sir. Her father is an innocent person, who lodged an FIR being instigated by some person, who has rivalry with Mangaraj Sir. She also stated that her statement has been recorded as per the instruction of some local persons. But now, she and her father do not want to proceed with the case against the Petitioner and they have no objection if the Appellant is released on bail.

8. Learned counsel for the State referring to the 164 statement submits the informant and her father have changed their versions and now they do not want to continue with the proceeding any further. Accordingly, learned counsel for the State submits that the Hon'ble Court may take final decision on the issue.

9. Considering the submissions made, the nature and gravity of offences alleged, the period of detention of the Appellant and considering the role of the Appellant in the alleged crime and the 164 statement of the victim girl, this Court sets aside the order dated 10.05.2021 passed by the learned Addl. Sessions Judge - cum-Special Court under POCSO Act, Bhawanipatna in C.T. No. No.98/30 of 2021. The Court is further inclined to release the Appellant on bail on furnishing a bail bond of Rs.50,000/- (Rupees Fifty thousand) with one local surety for the like amount to the satisfaction of the learned court in seisin of the matter subject to the following conditions :

(i) He shall appear before the trial court on each and every date as fixed by the court;

(ii) He shall not tamper with the prosecution evidence;

(iii) He shall not influence or threaten any prosecution evidence and cooperate

with the investigation;

(iv) He shall not make any attempt to reach out or contact the victim girl in any way;

(v) Violation of any of the above conditions shall entail cancellation of the bail.

10. It is further directed that the bail of the Appellant is subject to compliance of above conditions only.

11. With the above direction, the CRLA is accordingly allowed.

12. Issue urgent certified copy of this order on proper application.

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