

(2023) 10 OHC CK 0012
In the Orissa High Court
Case No : Criminal Appeal No.1038 Of 2023

Kabi Nayak @ Dharani Nayak

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 03-10-2023

Acts Referred:

Indian Penal Code, 1860 — Section 342, 363

Protection of Children from Sexual Offences Act, 2012 — Section 10

Citation : (2023) 10 OHC CK 0012

Hon'ble Judges : S.K. Sahoo, J

Bench : Single Bench

Advocate : S. Dash, Priyabrata Tripathy

Final Decision : Disposed Of

Judgement

S.K. Sahoo, J

This matter is taken up through Hybrid arrangement (video conferencing/physical mode).

Heard.

Admit.

Call for the trial Court records.

I.A. No. 2252 of 2023

This is an application for bail.

Heard the learned counsel for the petitioner and learned counsel for the State.

The appellant-petitioner Kabi Nayak @ Dharani Nayak has been convicted under sections 363 and 342 of the Indian Penal Code and under section 10 of the POCSO Act and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.2,000/- for each of the offences punishable under

section 363 of the Indian Penal Code and section 10 of the POCSO Act and rigorous imprisonment for one year and fine of Rs.1000/- for the offence under section 342 of the Indian Penal Code and in default of payment of total fine amount of Rs.5,000/, he shall suffer further imprisonment for three months and both the sentences were directed to run concurrently by the learned Addl. Sessions Judge -cum- Presiding Officer, Special Court under POCSO Act, Sundargarh in Special G.R. Case No. 13 of 2022/Trial No.139 of 2022.

Learned counsel for the petitioner submitted that the petitioner is in judicial custody since 27.01.2022 and he was never released on bail during trial and thus, out of five years of substantive sentence imposed by the learned trial Court, the petitioner has already undergone more than one year eight months of substantive sentence and there is no likelihood of hearing of the appeal in the near future and balance of convenience lies in his favour and therefore, the bail application of the petitioner may be favourably considered.

Learned counsel for the State, on the other hand, opposed the prayer for bail.

Considering the submissions made by the learned counsel for the respective parties, the nature of evidence adduced during trial, the substantive sentence imposed on the petitioner, the period undergone by the petitioner in judicial custody and absence of any chance of early hearing of the appeal in the near future. I am inclined to release the petitioner on bail.

Let the appellant-petitioner be released on bail pending disposal of the appeal on furnishing bail bond of Rs.50,000/-(rupees fifty thousand) with two solvent sureties each for the like amount to the satisfaction of the learned trial Court with such terms and conditions as the learned Court may deem just and proper including the condition that he shall not indulge in any criminal activities. Violation of any of the conditions shall entail cancellation of bail.

The I.A. is disposed of.

I.A. No. 296 of 2023

This is an application for stay of realization of fine. Heard.

There shall be stay of realization of fine amount imposed on the appellant-petitioner pursuant to the order dated 03.01.2023 passed by the learned Addl. Sessions Judge -cum- Presiding Officer, Special Court under POCSO Act, Sundargarh in Special G.R. Case No. 13 of 2022/Trial No.139 of 2022 pending disposal of the criminal appeal.

The I.A. is disposed of.

Issue certified copy as per rules.

.....