
(2015) 07 OHC CK 0060

In the Orissa High Court

Case No : BLAPL Nos. 2661, 2667 and 2865 of 2015

Laxman Bachha and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 27-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 120-B, 307, 323, 324, 325

Citation : (2015) 07 OHC CK 0060

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

Bench : Single Bench

Advocate : Giridhari Rout, Pradip Kumar Ray and G. Muduli, for the Appellant;
Deepak Kumar Pani, A.S.C., Advocates for the Respondent

Judgement

S.K. Sahoo, J—The petitioner in BLAPL No. 2661 of 2015 namely, Laxman Bachha has filed this application under section 439 Cr.P.C. for bail as his prayer for bail was rejected by the learned Sessions Judge, Kalahandi, Bhawanipatna vide order dated 13.5.2015 in Bail Application No. 71 of 2015.

The petitioner in BLAPL No. 2667 of 2015 namely, Srikanta Kishore Mallick has filed this application under section 439 Cr.P.C. for bail as his prayer for bail was rejected by the learned Sessions Judge, Kalahandi, Bhawanipatna vide order dated 15.5.2015 in BLAPL No. 74 of 2015.

The petitioner in BLAPL No. 2865 of 2015 namely, Prasanna Kumar Dora has filed this application under section 439 Cr.P.C. for bail as his prayer for bail was rejected by the learned Sessions Judge, Kalahandi, Bhawanipatna vide order dated 13.5.2015 in BLAPL No. 73 of 2015.

Since all these bail applications arise out of Bhawanipatna Town P.S. Case No. 99 of 2015 registered under sections 364, 307, 120-B read with section 34 Indian Penal Code corresponding to C.T. Case No. 374 of 2015 pending in the Court of learned S.D.J.M., Bhawanipatna, with the consent of the parties, the bail

applications were heard analogously and the same are disposed of by this common order.

2. On 27.4.2015 one Sarat Chandra Pradhan of Air Strip Road, Utkela, P.S. - Kesinga lodged a First Information Report before Inspector-in-Charge, Town Police Station, Bhawanipatna stating therein that on 26.4.2015 (Sunday) at about 11.30 a.m., his daughter "S.P." (hereafter "the victim"), who was aged about 24 years had been to Bhawanipatna to meet the President of her political party namely, Dusmant Nayak and Advocate Kunal Behera and after having discussions with both of them, she was returning home. On the way, a man came in a red colour four wheeler vehicle and approached her and intimated her that her father (the informant) had met with an accident. Before the victim could able to ascertain the details, she was forcibly taken inside the car and the vehicle moved towards a hilly area. The unknown persons present in the vehicle gagged her mouth and assaulted her. The victim could know from the talk amongst the kidnappers that it is the co-accused Surendra Panda who happens to be the husband of one Diptimayee Panda was involved in her kidnapping. The kidnappers were talking amongst themselves to kill the victim after committing rape on her and even they tried to strangle the victim after receiving a phone call. The victim tried to escape from the clutches of the kidnappers but she was caught and then assaulted as a result of which she became senseless. The police subsequently rescued the victim in a senseless condition. At about 11.00 p.m., getting intimation from the police, the informant came to Bhawanipatna Hospital and found the victim in a critical condition. The informant had a talk with the victim. After taking with the victim, the informant suspected that in the kidnapping of the victim, accused Surendra Panda and his wife Diptimayee Panda were involved and it is as per their conspiracy that the crime had been committed. The informant mentioned in the FIR that the mobile phone, Pan Card, ATM card, gold ornaments and money purse of the victim were also missing.

On the basis of such First Information Report, Bhawanipatna Town P.S. Case No. 99 of 2015 was registered on 27.4.2015 under section 364, 307, 120-B read with section 34 Indian Penal Code against accused Surendra Panda and three other unknown persons.

The Inspector-in-charge handed over the investigation of the case to S.I. of police Ansupa Behera.

3. During course of investigation, the victim was examined on 27.4.2015. In her statement, the victim stated that she met Diptimayee Panda about two years prior to the incident in a training programme. She visited the house of Diptimayee Panda during course of which she also met the husband of Diptimayee Panda, namely Surendra Panda, who was serving in the State Bank of India. The victim requested Surendra Panda to arrange some loan for the construction of the house and Surendra Panda assured her to arrange such loan but insisted the victim to keep physical relation with him. Taking advantage of the helplessness of the victim, Surendra Panda forcibly kept physical relationship

with the victim and also captured it in video and thereafter blackmailed the victim showing the video footage and thereby continued to keep physical relationship with her. Surendra Panda took the victim to accused-petitioner Laxman Bachha, who was working in the office of the Sub-collector and with assurance of arranging a service for the victim, compelled her to keep physical relationship with Laxman Bachha. The accused-petitioner Laxman Bachha took the victim to his friends namely, accused-petitioner Prasanna Kumar Dora who was working as a Steno and accused-petitioner Srikanta Kishore Mallick who was working as a peon in the office of the Sub-collector and all of them kept physical relationship with the victim forcibly and threatened her to leak the video footage. On 16.9.2014, Surendra Panda and his wife Diptimayee Panda called the victim to their house. When the victim arrived there, she found accused-petitioners Prasanna Dora and Srikanata Kishore Mallick and another unknown person were present there. The victim was gang raped by Prasanna Dora, Srikanta Kishore Mallick and the unknown person which was also recorded in video. The victim requested the accused persons to handover the video recording to her but Diptimayee Panda quarreled with the victim and foisted a case against the victim for which she was taken into custody.

The victim further stated in her statement that on 26.4.2015 after meeting with her advocate, while she was waiting near Ganesh Temple Square, Nuapada to go to her house, a person came in a red colour van and told her that her father had met with an accident. Before the victim could understand anything, she was taken forcibly inside the van and door was closed. She found three persons in the vehicle and one of them was accused-petitioner Srikanta Kishore Mallick. She was taken towards Jaleswar Temple but on the way, the kidnappers changed their destination and took the car towards Tarani Temple. They parked the vehicle at a place and waited till the approach of the evening. When the darkness set in, they brought the victim outside the van and taking advantage of the situation, the victim tried to escape from the spot but the accused persons chased her, caught hold her and tried to kill her by throttling with her scarf for which she became senseless. The victim suspected that accused persons Surendra Panda, Laxman Bachha and Prasanna Kumar Dora had utilised accused-petitioner Srikanta Kumar Mallick to kill her.

4. On 26.4.2015, the victim was sent for medical examination to District Headquarters Hospital, Bhawanipatna where the doctor noticed some abrasions i.e., nail scratch on her right upper arm, left upper arm, left side chest which were opined to be simple in nature but neither any ligature mark or any other injury was noticed on the neck of the victim.

5. Some witnesses were examined during course of investigation. One Aswini Patra stated that he found the victim lying on the road side nearer to Tarani Temple and he contacted PCR Van over phone, which came and shifted the victim in a senseless condition to the hospital. Similar statement was made by one Sabaya Pradhan.

6. All the three accused petitioners were arrested on 29.4.2015 and they were forwarded to the Court of learned S.D.J.M., Bhawanipatna on the next day.

7. Mr. Asok Mohanty, learned Sr. Advocate appearing for petitioner Prasanna Kumar Dora in BLAPL No. 2865 of 2015 contended that a bare reading of the FIR would make it crystal clear that the name of the petitioner is not reflected therein and the entire allegations are against co-accused Surendra Panda and his wife. The learned counsel further contended that so far as the incident dated 26.4.2015 is concerned, relating to which the present case has been instituted, the victim has stated only the name of accused petitioner Srikanta Kishore Mallick to be present in the vehicle along with some other unknown persons. The learned counsel further contended that as per the statement of the victim, she had previous acquaintance with the petitioner Prasanna Kumar Dora but in spite of that, she has not implicated the petitioner to be present in the vehicle. He further contended that on the suspicion of the victim regarding involvement of the petitioner in her kidnapping, the petitioner should not be further detained in custody. The learned counsel further contended that Surendra Panda and his wife Smt. Diptimayee Panda had previous dispute with the victim for which an FIR was lodged by Smt. Diptimayee Panda against the victim on 16.9.2014 and accordingly Bhawanipatna Town P.S. Case No. 163 of 2014 was registered under section 341/323/325/324/326/307 of IPC and to counter that FIR, the father of the victim namely Sarat Chandra Pradhan also lodged an FIR on 17.9.2014 against Surendra Panda and his wife which was registered as Bhawanipatna Town P.S. Case No. 165 of 2014 under section 507/342/354/323/324/325/326/379/307/34 of IPC. The learned counsel further submitted that relating to the incident dated 16.9.2014, even though the victim was examined in Bhawanipatna Town P.S. Case No. 165 of 2014 by police on 17.9.2014 by police and her 164 Cr.P.C. statement was recorded on 30.9.2014 in connection with that case by learned S.D.J.M., Bhawanipatna but she has not whispered anything against any of the petitioners and for the first time, when she was examined in connection with this case on 27.4.2015, she has alleged against the petitioners regarding their involvement in the incident dated 16.9.2014. The learned Counsel further contended that the petitioner is no way connected with the alleged kidnapping of the victim and since the petitioner is a Govt. servant, there is no chance of his absconding and the nature of evidence is such that there is no chance of tampering with the same and accordingly urged that the bail application of the petitioner to be favourably considered.

Mr. Giridhari Rout, learned counsel for the accused petitioner Laxman Bachha submitted that neither in the FIR nor in the 161 Cr.P.C. statement of the victim, name of the petitioner finds place in connection with the alleged kidnapping of the victim and there is also absence of any material regarding criminal conspiracy of the petitioner with other co-accused persons and therefore basing on the suspicion of the victim, the petitioner should not be further detained in jail custody. He further contended that the petitioner is a Govt. employee and his son is a neurological patient who requires frequent treatment at Bangalore for

which the presence of the petitioner in the house is very much necessary.

Mr. Durga Prasad S. Mallick appearing for accused petitioner Srikanta Kishore Mallick contended that the allegation made by the victim that there was an attempt to strangle her by means of her scarf (chunri) is falsified by the medical report. He further contended that it is improbable that in the afternoon around 5.30 p.m. during the summer season, when there are shops and residential houses near the vicinity, there would be any attempt to kidnap the victim and nobody would be there to see the incident. He further contended that the petitioner is working as a peon in the office of the Sub-collector, Bhawanipatna since 1996 and he has been falsely entangled in the case just as a counter blast to the FIR which has been lodged against the victim.

Mr. Deepak Kumar Pani, learned counsel for the State rebutting the contentions raised by the learned counsels for the petitioners submitted that the father of the victim had earlier instituted a case against Surendra Kumar Panda and Diptimayee Panda on 17.9.2014 which corresponds to Bhwanipatna Town P.S. 165 of 2014 and during course of investigation of the said case, the statement of the victim has been recorded in which she has implicated all the three petitioners to have ravished her and taken her nude photographs on video. He further contended that just to eliminate the victim, the petitioners and co-accused Surendra Panda hatched out a plan and on the basis of such plan, accused petitioner Srikanta Kishore Mallick along with some other persons kidnapped the victim on 26.4.2015 and an attempt was made to kill her but luckily she survived. The learned counsel further contended that since the investigation is under progress and the conspiracy angle is yet to be unearthed, at this stage the bail should not be granted as it would hamper the investigation of the case. He further contended that the accused petitioners are very influential persons and there is every chance of tampering with the evidence and therefore he objected to the prayer for bail.

Mr. U.C. Mishra, the learned counsel appearing for the victim also objected to the prayer for bail and contended that the statement of the victim gives a clear picture as to how taking advantage of her poverty and simplicity, she had been harassed, humiliated and exploited by the accused petitioners and they have played with the life of an innocent girl and every attempt was made to suppress the truth by putting an end to her life but she was fortunate enough to escape from the hands of the kidnappers. He further urged that the accused petitioners are very powerful persons and since being the Govt. servant, they have misconducted themselves and exploited the victim, no sympathy should be shown to them.

8. Adverting to the contentions raised by the learned counsels for the accused petitioners as well as the learned counsel for the State and the informant, one thing is very clear that in the FIR dated 27.04.2015 which was lodged by the father of the victim namely Sarat Chandra Pradhan after due consultation with the victim, there is no whisper against any of the accused petitioners either

directly or indirectly rather in the FIR, it is suspected that co-accused Surendra Panda and other three unknown persons are involved in the offence of kidnapping and attempting to commit murder of the victim. It is also apparent that so far as the incident relating to 26.4.2015 is concerned, for which this case has been instituted; the victim has implicated accused petitioner Srikanta Kishore Mallick and some unknown persons. Her statement reveals that she suspected the involvement of the other accused petitioners namely Laxman Bachha and Prasanna Kumar Dora in the offence in view of the previous incidents. So far as the previous incident dated 16.9.2014 is concerned, even though the victim was examined in Bhawanipatna Town P.S. Case No. 165 of 2014 by police on 17.9.2014 by police and her 164 Cr.P.C. statement was recorded on 30.9.2014 in connection with that case by learned S.D.J.M., Bhawanipatna but she has not stated anything against any of the petitioners and for the first time, when she was examined in connection with this case on 27.4.2015, she alleged against the petitioners regarding their involvement in the incident dated 16.9.2014. Her statement that she became senseless is corroborated by the statements of two witnesses namely Aswini Patra and Sabaya Pradhan. The medical examination report dated 27.4.2015 of the victim indicates that she was examined at District Headquarter Hospital, Bhawanipatna on 26.4.2015 at 9.30 p.m. and the report indicates that she sustained some abrasions on her right upper arm, left upper arm, left side chest which have been opined to be simple in nature. No ligature mark or any other injury was noticed around the neck. The medical examination report further indicates that on regaining consciousness, the victim denied to give her consent for her physical examination and internal examination. The FIR was lodged on 27.4.2015 and in the meantime almost three months have passed but no concrete material has been found regarding the involvement of accused petitioners Prasanna Kumar Dora and Laxman Bachha in the kidnapping of the victim or attempt to commit her murder. Relating to the kidnapping and attempt of murder, the statement of the victim is against accused petitioner Srikanta Kishore Mallick and some unknown persons. Though the victim suspected the involvement of the accused petitioners Prasanna Kumar Dora and Laxman Bachha but in spite of the fact that the investigation has made substantial progress in the meantime, no further materials have come out against these two petitioners. Even though the victim has made serious allegations relating to all the accused petitioners in the previous incidents but so far as the case in question is concerned, her allegation concentrates around accused petitioners Srikant Kishore Mallick and some unknown persons.

9. Law is well settled that while passing orders on bail applications, detailed examination of the evidence and elaborate documentation of the merits of the case should be avoided and no party should have the impression that his case has been prejudged. To be satisfied about a prima facie case is not the same as an exhaustive exploration of the merits in the order itself. When the application is made at the investigation stage, what are the considerations that should weigh

with the Court are in quite contrast with the stage when matters are more stable, as in the case where the charge sheet is already filed or in a case where the trial is already in progress and those considerations that are brought to bear at a later stage should not at any rate be brought into focus on material which is gathered during investigation while it is in progress. The power to grant bail should not be exercised as if the punishment before trial was being imposed and even where prima facie case is established, the approach of the Court in the matter of bail should not be that the accused should be detained by way of punishment.

10. Considering the materials available on record and particularly absence of any clinching prima facie materials against accused petitioners Prasanna Kumar Dora and Laxman Bachha relating to the incident dated 26.4.2015 in spite of substantial progress of investigation and since the petitioners are service holders and there would be no difficulty to ensure their presence at the time of trial, without delving into a detailed examination of the evidence and elaborate documentation of the merits of the case, I am inclined to release these petitioners on bail.

Accordingly, it is directed that the petitioner in BLAPL No. 2661 of 2015, namely Laxman Bachha and petitioner in BLAPL No. 2865 of 2015, namely Prasanna Kumar Dora be released on bail to the satisfaction of the learned S.D.J.M., Bhawanipatna in C.T. Case No. 374 of 2015 by furnishing bail bond of Rs. 50,000.00 (rupees fifty thousand) with two local sureties for the like amount to the satisfaction of the Court in seisin over the matter with further terms and conditions as the learned Court may deem just and proper with additional conditions that they shall not tamper with the evidence and they shall not directly or indirectly make any inducement, threat or promise either to the victim or to any other person acquainted with the facts of the case and they shall co-operate with the investigation and make themselves available for interrogation by the I.O. as and when required.

Violation of any terms and conditions imposed by either this Court or by the learned S.D.J.M., Bhawanipatna shall entail cancellation of bail.

11. Considering the prima facie materials available against accused petitioner Srikanta Kishore Mallick in BLAPL No. 2667 of 2015 regarding his involvement in the kidnapping of the victim and attempt to commit her murder on 26.04.2015 and taking into account the nature and gravity of the offence, I am not inclined to release him on bail. Accordingly, his prayer for bail stands rejected.

12. In the result, BLAPL No. 2661 of 2015 filed by Laxman Bachha and BLAPL 2865 of 2015 filed by Prasanna Kumar Dora are allowed and BLAPL No. 2667 of 2015 filed by Srikanta Kishore Mallick stands rejected.