
(2020) 05 OHC CK 0003
In the Orissa High Court
Case No : Bail Application No. 5872 Of 2019

Manoranjan Behera

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 14-05-2020

Acts Referred:

Indian Penal Code, 1860 — Section 376(2)(n)
Protection Of Children from Sexual Offence Act, 2012 — Section 6

Citation : (2020) 05 OHC CK 0003

Hon'ble Judges : S.Pujahar, J

Bench : Single Bench

Advocate : Sashibhusan Das, H.N. Pandah.N.Panda

Final Decision : Disposed Of

Judgement

1. I have heard the learned counsel for the petitioner and the learned counsel for the State.
2. The petitioner being in custody in G.R. Case No.68 of 2018, arising out of Cuttack Urban Police District Mahila P.S. Case No.54 of 2018, pending in the Court of the learned 3rd Additional Sessions Judge-cum-Presiding Officer, Children's Court, Cuttack, has filed this petition for his release on bail. The offences alleged against him are punishable under Sections 376(2)(n) of the I.P.C. read with Section 6 of the Protection of Children from Sexual Offence Act, 2012.
3. The allegation of the prosecution against the petitioner is that the petitioner, who happens to be a cousin of the victim being her mother's sister's son, came and stayed in the house of the victim at Cuttack for about three months, i.e., January to March, 2018. During the aforesaid period, he stated to have giving her promise to marry kept physical relationship with her, a minor allegedly aged about 14 years. However, thereafter the petitioner left their house. Later on it came to light that the victim has become enceinte. The victim alleged that the

petitioner was the author of the same. Hence, F.I.R. was lodged in the month of June, 2018.

4. On the aforesaid allegation, petitioner was taken to custody. He has been charge sheeted and now facing the trial being charged for the offences stated earlier.

5. It appears that trial in this case has substantially progressed inasmuch the victim and some material witnesses have since been examined and the victim has also in the meanwhile gave birth to a child.

6. Learned counsel for the petitioner, drawing the notice of the Court to the D.N.A. test report, submitted that when the petitioner to be the father of the child was not established on such test, the implication of the petitioner in this case as such false. According to him, after the victim became enceinte by someone, the petitioner was asked to marry her and when he denied, he was falsely foisted in this case to coerce him to marry the victim. Therefore, in such premises, when the material witnesses have been examined and the petitioner has no chance of absconding and/or tampering with the prosecution evidence, the petitioner deserves to be released on bail, notwithstanding his indictment in a heinous and serious offence prescribing stringent punishment for life imprisonment on conviction, submitted by the learned counsel for the petitioner.

7. In response, learned counsel for the State submitted that since the victim categorically stated that the petitioner giving her promise to marry kept physical relationship with her, even if the D.N.A. test conducted negated that the petitioner to have fathered the child given birth by the victim, the same no way destroys the version of the victim of sexual assault on her by the petitioner. The Court appreciating the D.N.A. test report at this stage should not come to a conclusion that no case for the offence alleged is made out against the petitioner, to release the petitioner on bail. The offence alleged being heinous and serious one prescribing stringent punishment for life imprisonment on conviction, this Hon'ble Court should be loathed in allowing the prayer made, was the submission of the State counsel.

8. Before addressing the contention of the parties, it would be apposite to mention here that this Court is alive to the fact that while considering the prayer for bail, a detailed examination of the evidence and elaborate documentation of the case though is required to be avoided by the Court yet the Court dealing with the bail application should be satisfied as to whether the prima facie case is there or not. Furthermore, even if a prima facie case is there, the Court has to take into consideration with regard to nature of accusation, severity of the punishment in a case of conviction and nature of supporting evidence and reasonable apprehension of tampering of the witnesses or apprehension of threat to the complainant and prima facie satisfaction of the Court in support of the charge, so also availability of the accused on being release on bail for trial, to consider the prayer for bail.

9. Reverting to the case at hand, as the D.N.A. test negatives the petitioner is the father of the child of the victim, it has been submitted that the implication of the petitioner in this case is false and concocted and the same is foisted to marry the victim, who happens to be his cousin sister and, as such, he deserves to be released on bail. Without making any comment on the same inasmuch as the same would tantamount to pre-judging the case, but taking note of the fact that in this case all the material witnesses have already been examined including the victim, trial in this case is not progressing presently as the normal functioning of the Court is disturbed by the Pandemic Covid-19 and caused prejudice to either of the parties, as such, prohibited in law, no material is produced to indicate that the petitioner has any chance of tampering with the evidence and/or fleeing from justice, if released on bail, notwithstanding the offence alleged is heinous and serious one prescribing stringent punishment for life imprisonment on conviction, this Court is of the view that the petitioner has made out a case for his release on bail.

10. Hence, the petitioner be released on bail in the aforesaid case by the Court in seisin over the matter on such terms and conditions as deemed just and proper.

11. However, it is made clear that release of the petitioner shall not be construed as expression of any opinion on the evidence adduced in the trial court in any manner. Therefore, the trial court has no binding tie with this order while rendering judgment in the aforesaid case.

12. With the aforesaid order, the BLAPL stands disposed of being allowed.