

(2024) 05 OHC CK 0065
In the Orissa High Court
Case No : Bail Application No. 1423 Of 2024

Pintu Mahalik

APPELLANT

Vs

State Of Odisha & Anr

RESPONDENT

Date of Decision : 06-05-2024

Acts Referred:

Indian Penal Code, 1860 — Section 34, 323, 341, 354(D), 376(D), 379, 506
Protection of Children from Sexual Offences Act, 2012 — Section 6
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(r), 3(1)(w)(i), 3(1)(w)(ii), 3(2)(v), 3(2)(va)

Citation : (2024) 05 OHC CK 0065

Hon'ble Judges : Dr. S.K. Panigrahi, J

Bench : Single Bench

Advocate : A.R. Panda, G.R. Mohapatra

Judgement

Dr. S.K. Panigrahi, J

1. This matter is taken up through hybrid arrangement.
2. Heard learned counsel for the parties.
3. The Petitioner being in custody in Chandbali P.S. Case No.274 of 2019 corresponding to Special (POCSO) Case No.96 of 2019, pending in the court of the learned Special Judge (FTSC), Bhadrak, registered for the alleged commission of offences under Sections 341/323/379/506/376(D)/354(D)/34 of IPC & Sec.3(1)(r),3(1)(w)(i), 3(1)(w)(ii),3(2)(v),(2)(va) of SC & ST (P.A.) Act r/ w Section 6 of POCSO Act, has filed this petition for his release on bail.
4. The brief fact of the case in brevity remains:-

On 04.11.2019 the informant made a written report before the Inspector-in-Charge of Chandabali Police Station. The informant alleged therein that she is a minor girl. In the night of the previous day while she had been to the nearby village field i.e. Chandbali Kali Padia to watch the Jatra through her by-cycle, she met her cousin brother named Sagar Mahalik. Thereafter, as the informant felt

uneasy while watching Jatra, she along with her cousin brother returned back to her house at about 4 A.M. On the way, near Chandbali College in front of the Fire Station, four accused persons obstructed and assaulted them. Thereafter, the accused named Biswajit caught hold the cousin brother of the informant and the rest of the accused persons forcibly took the victim / informant to the nearby field and one after another committed sexual act with her against her will. The informant in her F.I.R. also alleged that the accused persons had recorded such inhuman act in their respective mobiles and when the informant shouted for help, the accused persons fled from the spot after committing sexual act with the informant / victim. But the cousin brother of the informant could caught hold one of the accused person named Biswajit.

5. Learned counsel for the Petitioner submits that the Petitioner is in custody since 07.11.2019. Out of fifty-four charge sheeted witnesses, only five witnesses have been examined and the trial is not likely to be completed in near future. He further submits that the conduct of the Petitioner inside the custody is satisfactory. He further undertakes that if the Petitioner is released on interim bail, he shall plant and maintain 125 trees around his village Barheinpur under Chandbali P.S.

6. Learned counsel for the Petitioner submits that the Supreme Court has held that right to have speedy trial is a fundamental right of a citizen. Hence, keeping a person in custody for such a long time without any trial is not justified and violative of his fundamental right. The importance of speedy trial has been emphasized in the case of Hussainara Khatoon & Ors. vs Home Secretary, State of Bihar, wherein the Hon'ble Supreme Court has iterated that:

"Speedy trial is, as held by us in our earlier judgment dated 26th February, 1979, an essential ingredient of 'reasonable, fair and just' procedure guaranteed by Article 21 and it is the constitutional obligation of the State to devise such a procedure as would ensure speedy trial to the accused. The State cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speedy trial."

7. He further argues that the period of long incarceration suffered, which entitle the Petitioner for grant of bail. Right to Speedy trial is a fundamental right of an under trial prisoner and this observations have been resonated, time and again, in several judgments including that of Kadra Pahadiya & Ors. v. State of Bihar (1981) 3SCC 671 wherein it has been held that the obligation of the State or the complainant, as the case may be, to proceed with the case with reasonable promptitude. Particularly, in a country like ours, where the large majority of the accused come from poorer and weaker sections of the society and are not versed with laws and after face the dearth of competent legal advice. Of course, in a given case, if an accused demands speedy trial and yet he is not given one, may be a relevant factor in his favour. But an accused cannot be disentitled from

complaining of infringement of his right to speedy trial on the ground that he did not ask for or insist upon a speedy trial.

8. The Supreme Court has also held in Mohd. Muslim @ Hussain v. State (NCT of Delhi) SLP (Crl.) No.915 of 2023 that incarceration has further deleterious effects where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials - especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.

9. Learned counsel for the State vehemently opposed the interim bail prayer of the Petitioner.

10. Without going into the merit of the case, considering the submissions made, facts and circumstances of the case and the period of detention of the Petitioner, it is directed that the Petitioner be released on interim bail for a period of three months reckoning from the date of his actual release on interim bail by the court in seisin over the matter in the aforesaid case on such terms and conditions as deemed just and proper by the court in seisin over the matter with further condition that:-

i. the Petitioner shall plant 125 plant sapling like mango, tamarind etc. around his village-Barheinpur under Chandbali P.S.

ii. the Petitioner shall start planting trees as soon as the rainy season approaches and will maintain those trees.

iii. the Petitioner shall appear before the local police station once in a week on Monday in between 10 A.M. to 1.00 PM.

iv. the Petitioner shall not indulge himself in any criminal offence while on interim bail.

v. the Petitioner shall not threaten or cause any kind of inconvenience to the victim or the family members of the victim.

vi. he shall not tamper the evidence of the prosecution evidence in any manner.

11. The Petitioner shall surrender before the court in seisin over the matter on or before the exact date of completion of interim bail period.

12. The Chandbali P.S. shall see whether the Petitioner has planted the tree or not.

13. The District Nursery shall extend the helping hand by supplying plants to the Petitioner.

14. Violation of the aforesaid conditions may entail consideration for cancellation of the interim bail granted to the Petitioner.

15. Urgent certified copy of this order be granted on proper application.

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1. List this matter on 20th August, 2024.

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