

(2015) 07 OHC CK 0061

In the Orissa High Court

Case No : BLAPL Nos. 2810 and 2864 of 2015

Srikanta Kishore Mallick and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 27-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 120-B, 307, 323, 324, 325

Citation : (2016) 121 CLT 365 : (2015) 2 OLR 536

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

Bench : Single Bench

Advocate : Durgaprasad S. Mallick, Srustidhar Samal, Sunil R. Dutta, Lalit M. Dutta and Basanta K. Mishra, for the Appellant; Deepak Kumar Pani, A.S.C., Advocates for the Respondent

Final Decision : Allowed

Judgement

S.K. Sahoo, J—The petitioner in BLAPL No. 2810 of 2015 namely, Srikanta Kishore Mallick and petitioner in BLAPL No. 2864 of 2015 namely, Prasanna Kumar Dora have filed applications under section 439 Cr.P.C. for bail as their prayer for grant of bail was turned down by the learned Sessions Judge, Kalahandi, Bhawanipatna vide order dated 22.5.2015 in Bail Application No. 86 of 2015.

Since these bail applications arise out of same First Information Report on the basis of which Bhawanipatna Town P.S. Case No. 165 of 2014 was registered under sections 507, 342, 354, 323, 324, 325, 326, 379, 307 read with section 34 of Indian Penal Code corresponding to C.T. Case No. 488 of 2014 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 17.9.2014 one Sarat Chandra Pradhan of village-Utkela, P.S. - Kesinga, Dist.-Kalahandi lodged a First Information Report before Inspector-in-Charge,

Town Police Station, Bhawanipatna stating therein that his daughter "S.P" (hereafter "the victim") who was aged about 23 years got acquaintance with one Diptimayee Panda of village Naktiguda in the training camp of DIC. Surendra Panda who is the husband of the said Diptimayee Panda used to contact the victim over mobile phone and also made obscene gesture to the victim in the absence of Diptimayee. When the victim intimated Diptimayee about the misconduct of her husband, Diptimayee called the victim to her house on 16.9.2014 for an amicable settlement.

It is further stated in the FIR that on 16.9.2014 at about 11.30 a.m. when the victim reached in the house of Diptimayee, the later offered her some Prasad and then both of them talked amongst themselves. All on a sudden Diptimayee got angry and challenged the victim as to why she leveled false allegation against her husband. She also threatened the victim to face the consequence and saying so, Diptimayee closed the door of the house. One man having black complexion who was concealing previously in the house of Diptimayee suddenly came out and attacked the victim and also tried to strangle her. That unknown man also outraged the modesty of the victim. Diptimayee tried to assault the victim with a knife for which there was push and pull between the two. The victim in order to save herself gave a push to Diptimayee and tried to come out of the house and in her attempt, she became successful.

It is further stated in the FIR that both the accused Surendra Panda and Diptimayee Panda attacked the victim in a pre-planned manner.

On the basis of such First Information Report, Bhawanipatna Town P.S. Case No. 165 of 2014 was registered against Surendra Kumar Panda and his wife Diptimayee Panda on 17.9.2014 under sections 507, 342, 354, 323, 325, 326, 379, 307 read with section 34 of Indian Penal Code. The Inspector-in-charge handed over the investigation of the case to S.I. of Police Anshupa Behera.

3. On 16.9.2014 basing on the report of Diptimayee Panda, Bhawanipatna Town P.S. Case No. 163 of 2014 was registered under sections 341, 323, 324, 325, 326, 307 Indian Penal Code against the victim wherein it was alleged that the victim attacked Diptimayee Panda by means of a knife on her neck and other parts of her body for which Diptimayee sustained bleeding injuries.

In connection with that case, the victim was arrested and remanded to jail custody.

4. During course of investigation, the victim was examined on 17.9.2014. In her statement, the victim stated that she met Diptimayee Panda about one and half years prior to the occurrence during a training programme of DIC. The husband of Diptimayee Panda was serving in a Bank. The victim was regularly visiting the house of the Diptimayee. The husband of Diptimayee Panda namely Surendra Panda started making indecent gesture to the victim and also sent obscene message to her on Mobile phone. She further stated that on 15.9.2014 night, Diptimayee Panda told her to come on the next day and accordingly on

16.9.2014 at about 11.30 a.m., the victim visited the house of Diptimayee Panda. Diptimayee closed the door and offered some fruits and water to the victim. Diptimayee then went to her bed room and put off her saya and blouse and she was only wearing her saree. When the victim came to her bed room, Diptimayee tried to strangle the victim with a scarf. She called a man who came and outraged the modesty of the victim. There was push and pull between the victim on the one hand and Diptimayee Panda and that unknown man on the other. Both of them tried to assault the victim by means of a knife but due to push and pull, Diptimayee Panda sustained injury on her neck. The unknown man suddenly fled away. Diptimayee also came out of the house and started shouting. The victim came back to her house in an auto rickshaw and narrated the incident to her father over phone.

5. While the victim was in jail custody in connection with Bhawanipatna Town P.S. Case No. 163 of 2014, on the prayer of the Investigating Officer, her statement was recorded by the learned S.D.J.M., Bhawanipatna on 30.9.2014 under section 164 Cr.P.C. wherein the victim stated that on 15.9.2014 night Diptimayee Panda called her to her house and accordingly she went there on 16.9.2014 at about 11.00 a.m. The victim narrated before Diptimayee about the indecent SMS sent to her and indecent behaviour shown to her by the husband of Diptimayee namely Surendra Panda. Diptimayee then called the victim to her bed room and offered her some Prasad. Diptimayee called somebody and in pursuance of her call, a young man came out. Diptimayee asked that man to commit rape on the victim and accordingly that man removed the wearing apparels of the victim and committed rape on her. The victim assaulted the rapist by means of a glass on his head and also in order to save herself, the victim pushed Diptimayee when the later tried to attack her with a knife. Diptimayee and that unknown man came to the down stairs and at that time the victim dressed herself and came out of the house.

6. While the victim was in jail, on the prayer of the Investigating Officer, the learned S.D.J.M., Bhawanipatna passed necessary orders for her medical examination inside the jail and accordingly on the requisition of the Investigating Officer, Dr. Nibedita Sahoo of District Headquarters Hospital, Bhawanipatna examined the victim inside the jail premises of District Jail, Bhawanipatna on 7.10.2014.

The medical examination report of the victim indicates that there was no external injury anywhere on her body except multiple bruises on her both breasts. There was no stains/bleeding/discharge on her clothing or genitals. There was no sign or symptom of recent sexual intercourse. Her hymen was found ruptured and allowed two fingers easily. On ossification test, her age was opined to be more than 20 years. Subsequently the radiology as well as pathology test were conducted at the District Headquarters Hospitals, Bhawanipatna.

7. On 25.2.2015 the Inspector-in-charge of Bhawanipatna Town Police Station took charge of investigation from SI Anshupa Behera as per the orders of

Superintendent of Police, Kalahandi. Perusing the case records including the statement of the victim, the I.O. was of the opinion that prima facie evidence under sections 507, 342, 354-B, 323, 324, 325, 326, 379, 307, 376 read with section 34 Indian Penal Code is well established against Diptimayee Panda and one unknown person. On 12.4.2015 the victim along with her father produced a CD containing questionable nude scenes which she had collected from Surendra Panda. The CD also contained SMS between Surendra Panda and the victim.

8. While the matter stood thus, on 27.4.2015 the father of the victim namely Sarat Chandra Pradhan lodged another First Information Report before Inspector-in-Charge, Town Police Station, Bhawanipatna stating therein about the kidnapping and attempt to commit murder of the victim on 26.4.2015, on the basis of such F.I.R., 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.

9. During course of investigation, the victim was examined on 27.4.2015 in connection with Bhawanipatna Town P.S. Case No. 99 of 2015. She was also re-examined on 27.4.2015 in Bhawanipatna Town P.S. Case No. 165 of 2014.

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 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 Laxman Bachha took the victim to his friends namely, accused-petitioner Prasanna Kumar Dora who was working as a Steno and accused-petitioner Srikanata 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, Srikanata 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 narrated in her statement about her kidnapping and attempt to commit murder on 26.4.2015 by accused-petitioner Srikanta Kishore Mallick and some unknown persons.

On the basis of such further statement of the victim dated 27.4.2015, the petitioners were taken into custody on 29.4.2015 and they were forwarded to the Court of learned S.D.J.M., Bhawanipatna on the next day in Bhawanipatna Town P.S. Case No. 99 of 2015 and also taken on remand in this case and offence under section 376-D Indian Penal Code was added.

10. Mr. Asok Mohanty, learned Sr. Advocate appearing for petitioner Prasanna Kumar Dora in BLAPL No. 2864 of 2015 contended that a bare reading of the FIR dated 17.9.2014 would make it crystal clear that the name of the petitioner is not reflected therein in any connection and the entire allegations are against co-accused Surendra Panda and his wife Diptimayee Panda. The learned counsel further contended that the first statement of the victim was recorded by police on 17.9.2014 and her second statement under section 164 Cr.P.C. was recorded on 30.9.2014 and in both these statements, she has not alleged anything about commission of gang rape by the petitioner. She stated about sexual assault on her by an unknown person in the house of Diptimayee Panda on 16.9.2014 in her police statement and about commission of rape by an unknown person in her statement before Magistrate. 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 in her first as well as second statement relating to the incident dated 16.9.2014. The learned counsel further contended that at a much belated stage i.e. on 27.4.2015, the victim implicated the petitioner in connection with the incident dated 16.9.2014 and she had not offered any explanation as to why she remained silent regarding the complicity of the petitioner for such a long period. It is further urged that the victim developed her case from stage to stage and therefore on the basis of such third statement which was given seven months of the occurrence, the petitioner should not be further detained in custody. He further contended that the petitioner is a Govt. servant and 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. Durga Prasad S. Mallick appearing for accused petitioner Srikanta Kishore Mallick in BLAPL No. 2810 of 2015 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 at a belated stage in the third statement of the victim and the statement of the victim is not consistent, truthful and trustworthy and as such the petitioner should be enlarged on bail.

Mr. Deepak Kumar Pani, learned counsel for the State rebutting the contentions raised by the learned counsels for the petitioners submitted that the victim had suppressed her version against the petitioners out of fear and to avoid social

stigma. Since another incident took place on 27.4.2015 and the victim was kidnapped and there was an attempt to commit her murder in which the petitioner Srikanta Kishore Mallick was directly involved and petitioner Prasanna Kumar Dora indirectly, she gave her statement implicating all the petitioners to have ravished her and taken her nude photographs on video. The learned counsel further contended that since the investigation is under progress, 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. He further urged that the accused petitioners are very powerful persons and since being the Govt. servants, they have misconducted themselves and ravished the victim, no sympathy should be shown to them.

11. 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 17.09.2014 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. There is even no allegation about commission of rape on the victim on 16.09.2014. In her first statement dated 17.09.2014 before police, the victim has also not alleged anything against any of the accused petitioners either directly or indirectly. In that statement also she has not alleged about commission of rape on her. In her second statement dated 30.09.2014 before Magistrate, though the victim alleged regarding commission of rape for the first time against an unknown person on 16.09.2014 but she did not allege anything against any of the petitioners. The medical examination report which is dated 7.10.2014 indicates that there was no external injury anywhere on her body except multiple bruises on her breasts, there was no stain/bleeding/discharge in the clothings or genitals and there was no sign or symptom of recent sexual intercourse and her hymen was found ruptured and allowed two fingers easily and the age of bruises was more than two weeks. The involvement of the petitioners came into picture relating to the occurrence dated 16.09.2014 for the first time in her third statement dated 27.4.2015. There is wide variance in the three statements and particularly in the third statement, the incident dated 16.09.2014 has been narrated in a completely different manner. The FIR was lodged on 17.09.2014 and in the meantime almost ten months have already passed and even after the victim named the petitioners in her third statement on 27.04.2015, three months have passed. It appears that the investigation has

made substantial progress in the meantime. Even though the victim has made serious allegations against the accused petitioners in her third statement, the evidentiary value of which is to be assessed at the time of trial, I am of the view that in the background of the case, the bail applications of the petitioners deserve favourable considerations.

12. 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.

13. Considering the materials available on record and particularly absence of any clinching prima facie materials against accused petitioners Prasanna Kumar Dora and Srikanta Kishore Mallick relating to the incident dated 16.09.2014 and the belated implication of the petitioners in the said incident about seven months after the occurrence and taking into account the substantial progress of investigation and the fact that 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. 2810 of 2015, namely Srikanta Kishore Mallick and petitioner in BLAPL No. 2864 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. 488 of 2014 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.

14. In the result, BLAPL No. 2810 of 2015 filed by Srikanta Kishore Mallick and BLAPL 2864 of 2015 filed by Prasanna Kumar Dora are allowed.