

(2020) 05 OHC CK 0011

In the Orissa High Court

Case No : Bail Application No. 2640 Of 2020

Vibhutee Kumar Gupta

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 18-05-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 164, 439
Indian Penal Code, 1860 — Section 294, 376, 506

Citation : (2020) 05 OHC CK 0011

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

Bench : Single Bench

Advocate : ParthaSarathi Nayak, S.S.Mohaptra, S Hota, Manoj Kumar Mohanty

Final Decision : Dismissed

Judgement

1. The schools are temple and the teachers are God, is the faith in which students are nurtured in India. However, the popularity and trust evoked by these teachers mystify school administration, government authorities and Parents when allegations of sexual misconduct are made. The instant case narrates one such occurrence related to epidemic of sexual violence in Indian schools.

2. The present bail application is filed under Section 439 of Cr. P.C. by the petitioner, namely, Vibhutee Kumar Gupta who is in custody in connection with Bondamunda P.S. Case No. 27/2020 corresponding to G.R. Case No. 166/2020 registered for commission of an offence punishable under Sections 376, 294 and 506 of the IPC pending in the file of JMFC, Rural, Rourkela. The bail application filed by the petitioner before the 1st Additional District and Sessions Judge, Rourkela was rejected on 13.03.2020. Subsequently, the petitioner moved the instant bail Application before this Court.

3. The chronological background and the factual conspectus as recounted from the updated case diary, the statements of the victim recorded both U/s. 161 and

Sec. 164 of the Cr.P.C. In the FIR, it has been alleged that on the date of the occurrence of offence i.e. on 08.12.2019, the victim had gone to Gyanodaya Vidyalaya where her younger brother Suraj Sharma was studying in Class-VI. The victim was also a former student of that School and now she is pursuing her +2 in NIOS. The Petitioner, the Principal-cum-Secretary of the School, called her to collect the Admit card of his younger brother on a Sunday. A few guardians were also present on that day, but they left some time after her arrival to the school. The petitioner then called the victim to his chamber and inappropriately touched her private parts and forcibly committed rape on her. He further threatened the victim of horrible consequences if the matter is disclosed before anybody. He further threaten that he would not spare his parents and her brother if the matter is leaked to anybody. Since then, the victim has been the receiving end of such warning calls/messages and the petitioner has been harassing the victim with blackmailing overtone to make the private photos viral in case of divulgence. The victim being a girl, could not muster courage to head on the mighty Petitioner instantly. Amidst the vertex of mental turmoil, after few days of the incident, she narrated everything to her mother and later she approached the Office of the Superintendent of Police (SP) with the aid of one of her family friends who is a social activist. The SP advised her to give written complaint to the Bondamunda Police Station on 24.02.2020 and accordingly she reported the matter before the said police station. Thus the wheels of investigation started moving. This aforesaid factual narratives amply reflect in her statement recorded U/s 164 Cr.P.C.

4. The learned counsel appearing on behalf of the petitioner perfevidly advanced his argument and contended that:

(i) There is delay of 2 months and 17 days in lodging the FIR, hence it was an afterthought.

(ii) The victim's presence at the place and time of occurrence of the offence is purely speculative. She was continuously in chat with her boyfriend named Saroj Nath Sharma over mobile phone. He further states that witness may belie but not the circumstances. The Police recorded the statement of Saroj Nath Sharma which reflects that on 08.12.2019 from 1.30 PM onward, he was in constant contact through mobile with the victim.

(iii) A prima facie involvement of the accused in the offence alleged against him U/s. 376 IPC is not made out as emerged from the investigation.

(iv) Further, the statement of the witnesses, namely, Abhimanyu Dalei, Pradeep Kumar Mohanty and Saroj Nath Sharma also indicates that petitioner is falsely implicated in this case.

(v) The statements of the victim are dotted with contradictions and omissions at various stages.

(vi) The statement of witnesses clearly stipulates that the present case has been

filed by the victim at the behest of one Mr. Nitish Sah, who has been inimically disposed as he was thrown out of job from the petitioner's School where the victim was also studying in the past.

(vii) Petitioner is in the custody for about 2 and half months on the basis of a false allegation. Further, the Court below (1st Additional District and Sessions Judge, Rourkela) has been unkind to the petitioner by not passing a reasoned order while rejecting the bail. The petitioner being a Secretary-cum-Principal of a School will not evade trial. The senile pace of trial will disproportionately impact him, hence the petitioner deserves to be enlarged on bail.

5. The Opp. Party - the State of Odisha drew this Court's attention by succinctly mapping the entire events and contended that:

(i) The present petitioner is implicated for commission of an offence U/s. 376 of IPC, which is a very serious offence and therefore, does not deserve the benefit of bail.

(ii) The petitioner had a predisposed mind to hatch such a plan to call her to the school on a Sunday and finding her alone he committed rape. This unerringly shows his intention to commit the crime.

(iii) The petitioner was constantly threatening the victim of dire consequences if she discloses that incident and also warned her private photos would be made viral if she does contrary.

(iv) The petitioner being an influential person of that locality, if granted bail, will pose a great threat for the victim as well as her family.

6. On the rival contentions advanced by the parties, this Court gives a thoughtful and serious consideration to the aforesaid submissions on the charges, more particularly the offence like rape. This Court adverts to the core issue which falls for consideration of this Court are under:

(i) Whether with the present sets of facts and circumstances, the submissions made by the counsel for petitioner is reliable?

(ii) If the first question is in affirmative, then whether petitioner should be granted bail in the present case?

7. As per the statement of the victim made under Section 164 of Cr.P.C., the petitioner inappropriately touched private parts and then forcibly committed rape on her. Having committed the heinous act, the petitioner started threatening the victim with dire consequences if the matter gets divulged at her end. He was also regularly blackmailing the victim to make her private photos viral. Fearing a lurking danger to her life and the life of the members of her family, she chose to remain silent, this fear suppressed her courage to speak up. However, being distressed, devastated and mentally traumatized for some time, she spoke to her mother about the incidence and finally brought the matter before the Bondamunda Police Station on 24.02.2020 which culminated into lodgment of an

FIR.

8. Essentially, the striking phenomena and judicial attitude, in this type of cases, are weighed by prima facie value of the case. The power to grant bail under Section 439, Cr.P.C. is of wide amplitude and encompasses a substantial amount of judicial discretion. But this judicial discretion, regardless of the nature of the case which warrant exercise of discretion, has to be used judiciously and not mechanically as succinctly articulated in *Ram Govind Upadhyay vs. Sudarshan Singh* (2002) 3 SCC 598, *Puran v. Rambilas* (2001) 6 SCC 338 and so on.

9. In order to cogitate, whether a case is fit for grant of bail or not has to be done by balancing numerous factors such as the nature of the offence, the severity of the punishment and a prima facie view on the involvement of the accused and so on. No straight jacket or tailormade formula is available to determine the blameworthiness of the accused sans a proper trial. Nonetheless, at this stage, for assessing whether a case is fit for grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt.

10. This Court is required to examine only whether there exists a prima facie case or reasonable ground to believe that the accused has committed the offence and his custody will sub-serve the Criminal Justice System. It is equally important that the custody of person touches upon the liberty of an individual. The rationale behind incorporation of bail provision in the Criminal Procedure Code, 1973 *GudikantiNarasimhulu v. State* AIR 1978 SC 429 was summarized by Justice Krishna Iyer: "law of bails has to dovetail two conflicting demands. Society's requirement of being shielded from misadventures of a person alleged to have committed a crime, and on the other hand upholding the fundamental canon of criminal jurisprudence i.e. the presumption of innocence of accused till he is proved guilty."

On this balance, the Court is required to look into, amongst other things, a prima facie view that the accused has committed the offence, the nature and gravity of the offence and the possibility of the accused barricading the proceedings of the trial in any manner or evading the course of justice. The Supreme Court of India has considered this issue and analyses the legal principles and concepts and pithily put in *Mahipal vs. Rajesh Kumar alias Polia* 2020) 2 SCC 118, *Anil Kumar Yadav vs. State (NCT of Delhi)* (2018) 12 SCC 129,, *Prasanta Kumar Sarkar vs. Ashis Chatterjee* (2010) 14 SCC 496and so on.

11. The delay in lodging the FIR in cases of rape is due to multiplicity of factors such as social stigma, family support structure, time to overcome the trauma which makes victim reluctant to go immediately to the police. The agony and anguish create the turbulence in the mind of the victim and it becomes difficult to muster the courage to acquire the psychological inner strength to wage a legal battle against the perpetrator of the crime. Therefore, the delay of about 2 months and 17 days in lodging the FIR on both the counts is axiomatic hence

reasonable and justified. The dilemma of belated reporting before the Police has been construed liberally by the apex court in plethora of cases; Sohan Singh and another vs. State of Bihar (2010) 1 SCC 68. State of Himachal Pradesh vs. Sanjay Kumar alias Sunny (2017) 2 SCC 51 State of Punjab vs. Gurmit Singh and Ors (1996) 2 SCC 384), Deepak vs. State of Haryana (2015) 4 SCC 762, Budha vs. State of Odisha (2019) SCC OnLine Ori 262 and so on.

12. The contention of the petitioner which hinges on the fact that the victim took no immediate action to report to Police is annoyingly insensitive towards a rape victim who continues to face significant barriers in access to justice, health care, counseling, and legal aid. Similarly, such victims encounter lack of sensitivity, dignity at the police stations and feel further intimidated and scared when the case reaches the courts. In addition, the demographic structure, crime specific factors and societal perception coupled with "everyone blames me syndrome" make a victim think thousand times before she embarks upon reporting a case. The deleterious and long term effects on the victim's physical and mental health due to sexual assault significantly erode her social participation which automatically factor into the mental dilemmas of "to report or not to report."

13. Further, weightage has been given by the petitioner on inconsistency with respect to time of occurrence and victim's chatting with another number belonging to one Saroj Nath Sharma who is her boyfriend. This factor could be accepted as credible but this aspect requires thorough trial for proving the said inconsistency. At this stage, a minor discrepancy of this nature cannot be allowed to forestall and overshadow the trial. The Case Diary does not succinctly chronicle this inconsistency with proper linkage to the time of the crime. There could be a possibility that the victim might be intimating or making effort to inform her boyfriend about the incident. Further, the exact time of rape may not have been in sync with the reporting version of the victim owing to ocean of mental and emotional turbulence in the aftermath of such incident. Sometimes, untold agony of traumatic experience and deathless shame dominates such victim's psychological space which leads to belated reporting.

14. Description of the instant case, does indicate some omissions and contradictions in the statement of victim, as contended by the petitioner's counsel but it is purely a matter of trial and at this stage, it does not materially affect the aching story given by the victim. It is an un-denying fact that, credibility is central to the legal treatment of any crime but in case of crime against women many impeding factors fail to make the story coherent at the stage of FIR or statement U/s 161 and 164 Cr.P.C. Therefore, Petitioner's allegations of dotted with contradictions and omissions cannot be given weightage at this stage and victim can be granted credibility discount.

15. In the hindsight, the instant case captures the attention of the prosecution and this Court. Sexual abuse of students is becoming devastatingly prominent in most schools. It is widespread but unfortunately not so acknowledged in our society. It is also a fact that vast majority of our teachers are trustworthy and

are governed by a moral compass, they operate in a professional manner and set very high standards for their students and for themselves. They would never breach the sacred trust of students, parents, school administration, or the society at large. However, a seemingly small but growing minority of perverted teachers have shaken the foundations of the teaching-learning culture by engaging in negative and improper relationships with students like the present one.

16. This silent plague of sexual abuse of students is also striking at the fabric of Indian schools. It is gradually becoming rampant in schools across the country. Schools are places where parents send their children to learn and expect those places to be safe and nurturing. As a further complication, in cases of this sort, has a higher propensity of sinking the teacher's professional reputation, hence the tendency to dismiss such allegation and alleging the victim as perpetrator is also not very uncommon. In cases of this nature, the ethical themes and professional boundaries governing the student-teacher relationship go for a toss. Being School authority, the petitioner should have been more mindful of his character and morality. Unfortunately, in the present case, there seems to be a huge deviation and an amoral tsunami has washed away the good conscience of the petitioner.

17. A wise exercise of judicial power under Section 439 of Cr.P.C. is inevitable to eliminate the evil consequences which are likely to flow out of its inordinate use. But judicial discretion, whatever may be the nature of the case wherein it is required to be exercised, has to be used with due care and caution. Having considered the matter in the aforesaid perspective and guided by the precedents cited hereinabove, this Court comes to an irresistible conclusion that the petitioner's prayer for bail cannot be accepted. However, the observation made hereinabove will not prejudicially affect the fair trial of the case.

For the aforesaid reasons, the present bail application is dismissed.