



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.36 of 2019

Afjal Raja @ Kartik

....

Appellant(s)

Represented by Adv.–

Mr. Devashis Panda, Advocate

-Versus-

State of Odisha

....

Respondent(s)

Represented by Adv.

Mr. Partha Sarathi Nayak, AGA

Ms. Samapika Mishra, Advocate (for informant)

CORAM:

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

AND

HON'BLE MR. JUSTICE SIBO SANKAR MISHRA

ORDER

23.02.2026

(Hybrid mode)

I.A. No.87 of 2019

Order No.

- 06.**
1. This is an application for bail.
 2. Heard Mr. Devashis Panda, learned counsel appearing for the appellant, Ms. Samapika Mishra, learned counsel appearing for the informant and Mr. Partha Sarathi Nayak, learned Additional Government Advocate for the State.
 3. Along with the present appellant, four other accused persons were put to trial in Special G.R. Case No.36 of 2018. Vide a common judgment dated 02.06.2018, the learned 2nd Additional Sessions Judge-cum-Judge (Special Court), Sambalpur convicted the present appellant for the offence under Sections 376(2)(i) of I.P.C. and Section 4/6 of the POCSO Act whereas the other accused persons, namely, Tinu Sahu, Hadu Panchbiha @ Kaira,



Abhilash Panchbiha @ Siba and Ashirbad Behera have been convicted for the offence under Section 376(DA) of I.P.C. and Section 4/6 of the POCSO Act. The appellant has been sentenced to undergo imprisonment for life which shall mean imprisonment for the remainder of his natural life and to pay a fine of Rs.50,000/- (rupees fifty thousand). Similarly, the co-accused persons have also been visited with the same sentence.

4. The appellant-Afjal Raja @ Kartika is in custody since 04.05.2018. Hence, he has moved this application seeking suspension of sentence pending appeal. The co-accused persons applied for grant of bail by filing application I.A. No.1212 of 2021 in CRLA No.454 of 2018. The coordinate Bench of this Court vide order dated 17.08.2023 admitted them to bail by allowing the application. While enlarging the co-accused persons on bail pending the appeal, the coordinate Bench has considered every aspects of the matter, which largely reflects in paragraphs-4 and 5 of the said order dated 17.08.2023. For convenience of ready reference, paragraphs-4 and 5 are reproduced hereunder:-

“4. Learned Counsel for the State opposing the move submits that delay of two days in disclosing the names of these Appellants in having the involvement in commission of rape upon the victim is not of that significance when the fact remains that the victim was under suffering mental trauma which can be seen from the admitted position that she committed suicide before the trial. He further submits that the victim having given her submission before the Magistrate, recorded under section-164 of the Cr.P.C. and she having not been examined for her death; the trial Court’s finding as against these Appellants holding them guilty for commission of offence under section-376(DA), of the IPC on the basis of the evidence of



her parents and the Investigating Officers has to sustain.

5. Taking into account the submissions made and on going through the materials on record, further keeping in view the surrounding circumstances including the fact that these Appellants (Tinu Sahu, Hadu Panchbiha @ Kaira, Abhilash Panchbiha @ Siba and Ashirbad Behera) have not misused the liberty while on parole; we are inclined to direct that the further execution of sentence imposed upon these Appellants- Tinu Sahu, Hadu Panchbiha @ Kaira, Abhilash Panchbiha @ Siba and Ashirbad Behera in Special G.R. Case No.36 of 2018 by the learned 2nd Additional Sessions Judge-cum-Judge (Special Court), Sambalpur shall remain suspended till disposal of this Appeal.

Accordingly, it is directed that these Appellants- Tinu Sahu, Hadu Panchbiha @ Kaira, Abhilash Panchbiha @ Siba and Ashirbad Behera be released on bail pending this Appeal on such terms and conditions as deemed just and proper by the Trial Court with further conditions that they shall positively surrender before the Trial Court as and when required, shall appear before the Inspector-in-Charge of concerned Police Station once in every month, i.e. on last Monday in between 10 am to 2 pm; and shall not indulge themselves in any criminal activity”

5. Mr. Panda, learned counsel for the appellant primarily emphasized his argument on the ground of parity. Apart from that, he has also relied upon the testimony of two doctors i.e. P.W.13 and P.W.16 to create doubt in the prosecution version.

The incident had taken place on 02.05.2018 whereas the P.W.16 examined the victim on 04.05.2018. He has opined as under:-

“On 4.5.2018 I was M.O. in DHH, Sambalpur. On that day on police requisition I examined one Puja



Sahani and found no bodily injury on her persons suggesting forcible sexual intercourse, no physical clue was found on her clothing suggesting any sexual offence, there was no sign and symptom of recent sexual intercourse from her genital examination, no foreign substance was found in her-vaginal swab, her blood group-was 'B' positive and her age was between 12 to 14 years and there was no sign and symptom of recent sexual intercourse. I collected her sample pubic hair and sealed it in an envelope and handed it over to the accompanied lady police constable. This Ext.18 containing nine sheets is my report and these Exts.18/1 and 18/2 are my signature in it.

2. The word recent sexual intercourse means, sexual intercourse within 0 to 72 hours from the time prior to medical examination."

Similarly, P.W.13 examined the present appellant on 04.05.2018, *inter alia*, deposing that Afjal Raja @ Kartika is found to be capable of having sexual intercourse and he was wearing the same clothes which he was wearing on 02.05.2018 and the cloth was given to the police. He further deposed that he did not find any bodily injury suggesting forcible sexual intercourse. He has also not found any sign and symptom of recent sexual intercourse.

6. Mr. Panda, learned counsel for the appellant further submitted that the entire case of the prosecution is based on the evidence of P.W.18, the informant and the mother of the victim and P.W.19, the father of the victim. The learned trial Court has primarily relied upon the testimony of the parents of the victim and convicted the appellant. He further submitted that in the present case, the victim has not been examined as during the pendency of the trial, she has expired.



7. Mr. Nayak, learned Additional Government Advocate for the State has vehemently opposed the bail plea advanced by the learned counsel for the appellant. He has submitted that on 08.05.2018, the statement of the victim under Section 164 of Cr.P.C. was recorded, which has been exhibited as Ext.34. He has taken us to the said statement, the victim has stated as under:-

“Kartika, the present appellant had called her to the school. When I went to the school, she started talking to me and forcibly had sexual intercourse with me despite my unwillingness. Thereafter, he left from the school. Out of scared, I remained in the school for some time. After half an hour, I came out from the school and started going towards by-pass chhak. There, I sat. Siba and Ashribad came and asked me to accompany them so that they can drop in the house. They instead of taking me to our house took a different place. First Siba forcibly kept physical relationship with me and after two minutes Ashribad had sexual intercourse with me. Thereafter, they left me near Tata Motors Office. There I sat for two hours. Hadu and Prakash took me in a vehicle saying that they will drop me in the house but they had taken me near a pond. Tinu was already there. Hadu and Prakash were standing side by side. Tinu had sexual intercourse with me. Hadu and Prakash took me towards RMC. There, Hadu had sexual intercourse with me. Thereafter, they left me near by-pass and threatened me not to tell either to the family members or to the police. If she informs the police, they threatened that her brother and sister will face the same situation. Therefore, I did not tell anyone in my house.”

(translated in English)

8. Perusal of the statement of the victim under Section 164 Cr.P.C., makes it clear that the present appellant has not participated in the offence under Section 376(DA) of I.P.C. He had no clue regarding the subsequent event. He has only committed the



crime at the first instance by calling the victim to the school and contacted physical relationship. This version of the victim is not finding support from the medical evidence. It is further important to mention that the incident took place on 02.05.2018 whereas the victim was medically examined on 04.05.2018. After four days i.e. on 08.05.2018, the statement has been recorded.

9. Mr. Panda, learned counsel has also taken us to Ext.18 i.e. the clinical medical examination report of the victim conducted on 03.05.2018. He has pointed out the relevant part of the said document besides the brief history noted in the report, which reads as under:-

“On dtd.2.5.18 at 6.20 p.m. the victim minor went to Sason School Verendah after invited by one Afjal Raja @ Kartika. There they both stayed for 10-15 minutes and gossiped, then Afjal Raja asked for sex. She denied but without her consent Afjal Raja forcefully made sexual intercourse with her. At that time, her aunty who stayed in the rented house near to her house saw them in a distance. On seeing Afjal Raja fled away from the spot. She also tried to escape but she did not come out after seeing her elder sister and afraid of her father. During the course of investigation, it is ascertained that on re-examination of the victim, she stated that after Afjal Raja fled away from the spot, she left towards Hatapada, Sason and after that Siba, Tinu, Ashirbad, Hadu committed rape with the victim against her will in different places and minor Prakash Behera assisted them.”

10. Mr. Panda, learned counsel stated that the narration of the incident as mentioned in Ext.18, which was recorded immediately after the incident, is different from the incident narrated by the victim in her statement under Section 164 of Cr.P.C. Apart from



that, he has also pointed out various contradictions in the prosecution evidence.

11. Regard being had to the period of judicial custody of the appellant and the fact that all the co-accused have already admitted to bail, and absence of any chance of early hearing of the appeal in the near future, we are inclined to release the appellants on bail.

12. Let the appellant be released on bail in the aforesaid case on furnishing bail bond of Rs.50,000/-(rupees fifty thousand) with one local solvent surety, who must be a family member for the like amount to the satisfaction of the learned trial Court, subject to the condition that while on bail the appellant shall not indulge in any criminal activities in any manner and any other conditions to be imposed by the learned trial Court deem fit and proper.

Violation of any of the conditions shall entail cancellation of interim bail.

13. Accordingly, the I.A. is disposed of.

Issue urgent certified copy of this order as per rules.

(Manash Ranjan Pathak)
Judge

(Sibo Sankar Mishra)
Judge