

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No. 376 of 2019

Deba @ Debabrata Majhi Appellant

Mr. A.R. Panda, Advocate

-versus-

State of Odisha

.... Respondent

Mr. R. Tripathy, A.S.C.

CORAM:

JUSTICE S.K. SAHOO

ORDER

22.11.2021

I.A. No.900 of 2021

Order No.

09. The matter is taken up through Video Conferencing.

This is an application under Section 389 of Cr.P.C. for grant of bail.

Heard.

The appellant-petitioner has been convicted section 376(2)(i) of the Indian Penal Code read with section 4 of the POCSO Act and sentenced to undergo R.I. for ten years and to pay a fine of Rs.5,000/- (rupees five thousand), in default, to undergo R.I. for three months for the offence under section 4 of the POCSO Act as the punishment under section 376(2)(i) and section 4 of the POCSO Act are the same, no

separate punishment is given for the offence under section 376(2)(i) of the Indian Penal Code and the sentences were directed to run concurrently by the learned Additional Sessions Judge –cum- Special Judge, Balasore in Special Case No. 57 of 2016.

Perused the impugned judgment.

Learned counsel for the petitioner submitted that the petitioner was taken into judicial custody in connection with this case on 27.02.2016 and as per the order of this Court, he was released from judicial custody on 05.10.2016 and till the date of pronouncement of the impugned judgment and order of conviction, he was in custody for seven months and after the pronouncement of the impugned judgment on 18.05.2019, he was remained in custody for about two and half years and as such the petitioner has remained in custody for total period of more than three years. It is further submitted that the evidence of the victim that the appellant dragged her from her backside and took her to the backside of the house and committed rape on her is getting no corroboration from the medical evidence as the doctor has stated that there was no recent mark of sexual intercourse on the person of the victim but sexual assault cannot be ruled out. It is stated that the occurrence in question took place on 23.02.2016 and the F.I.R. was lodged on 24.02.2016 and the doctor examined the

victim on 25.02.2016. Learned counsel further submitted that there are good chances of success in the appeal and balance of convenience is in his favour and there is no chance of early hearing of the appeal in the near future and therefore, the bail application of the petitioner may be favourably considered.

Learned counsel for the State, on the other hand, submitted that the date of birth of the victim (P.W.2) as per the evidence of the Headmaster of the school, who was examined as P.W.6 where the victim was prosecuting her studies is 09.01.2004 and since the occurrence has taken place on 23.01.2016, the victim was just aged about thirteen years at the time of occurrence and the doctor on the basis of radiologist report found that the victim was within the age group of fifteen to sixteen years. Learned counsel for the State further placed the evidence of the victim from which it appears that the appellant tied her hands from the backside and also tied her mouth for which she could not raise any hullah.

Considering the submissions of learned counsel for the respective parties, the nature of evidence adduced by the victim during trial who was thirteen years of age at the time of occurrence coupled with the medical evidence as well as the evidence adduced by the Headmaster of the school, at this stage, I am not inclined to release the petitioner on bail.

Accordingly, the I.A. stands dismissed.

The appellant is at liberty to renew his prayer for bail after serving half of the substantive sentence, if the appeal is not taken up for hearing.

(S.K. Sahoo)
Judge

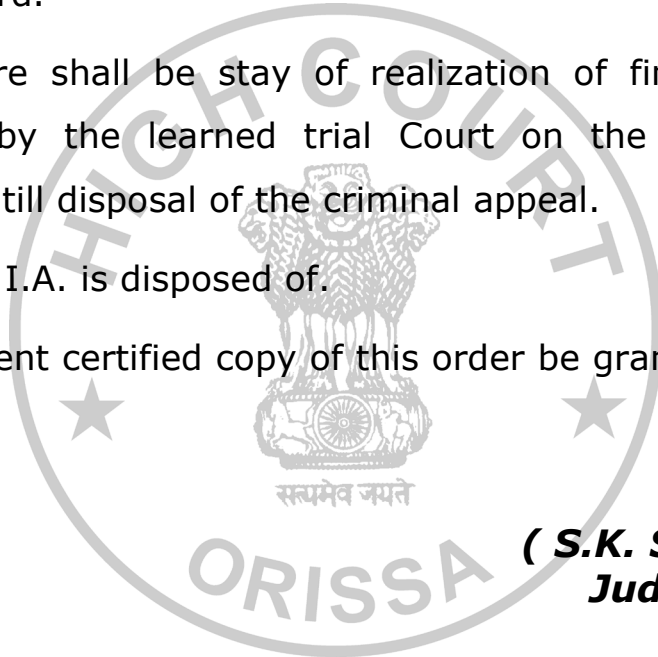
I.A. No. 901 of 2019

10. Heard.

There shall be stay of realization of fine amount imposed by the learned trial Court on the appellant-petitioner till disposal of the criminal appeal.

The I.A. is disposed of.

Urgent certified copy of this order be granted as per rules.



(S.K. Sahoo)
Judge