



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No. 604 of 2019

Nila @ Nilamani Das @ Malik **Appellant(s)**
Represented by Adv.-
Mr. Sk. Zafarulla, Advocate
-Versus-

State of Odisha **Respondent(s)**
Represented by Adv.
Mr. Suryakanta Padhi, ASC
Mr. Ramanath Palo, Advocate (Informant)

CORAM:

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

AND

HON'BLE MR. JUSTICE SIBO SANKAR MISHRA

ORDER

24.07.2026

(Hybrid mode)

I.A. No.1358 of 2019

Order No.

- 07.** **1.** This is an application for bail moved by the appellant.
- 2.** The appellant has been convicted under section 376(2)(i) of the Indian Penal Code and under Section 4 of the POCSO Act and sentenced to undergo imprisonment for life and to pay a fine of Rs.1,00,000/- (Rupees one lakh), in default, to undergo R.I. for six months for the offence under Section 4 of the POCSO Act and no separate punishment has been awarded under Section 376(2)(i) of the IPC by the learned Additional



Sessions Judge-cum-Special Judge, Bhadrak in Special Case No.19 of 2016.

3. Pursuant to the order dated 25.03.2026, notice was issued to the victim/informant and Mr. Ramanath Palo, learned counsel appeared for the victim/informant for the legal aid counsel.

4. Heard learned counsel for the parties.

5. The State Counsel has produced a report regarding the antecedents, jail conduct and custody period undergone by the appellant. From the report, it reveals that the appellant has no adverse antecedents and his jail conduct is also satisfactory. The appellant has already undergone more than ten years custody as per the custody certificate issued by the Superintendent, District Jail, Bhadrak.

6. The prosecution story as per the FIR is that on 16.02.2016 at 10.30 P.M the Informant Smt. Malli Das W/o Bansidhar Das of village Talakanpada PS-Tihidi, Dist Bhadrak appeared at police station and reported that on 16.02.2016 at 5 P.M her minor daughter Mita Das aged about 10 years when complained of pain in her lower belly and cried, she asked her the reason. On her disclosed that on last Wednesday, i.e., on 10.02.2016 noon she had been



to river Salandi for washing the utensil with Geli and Rina of her village. Rina and Geli came back to their houses after washing their utensils and she alone there. Her neighbourer Nila Das came out of bamboo bush nearby and called her, when she refused he picked up her, then she shouted and Nila Das stopped her mouth by putting his hand. Nila Das brought her to bamboo bush and kept off her pant inserted his private part into her private part and she became unconscious. Accused Nila Das threatened her to do away with live including her if she would disclose the matter before anybody.

7. The entire case of the prosecution revolves around the evidence of P.W.1, who is the victim in the present case. She in her testimony has deposed that on 16.02.2016 at about 5.00 P.M. she along with one Rina (P.W.5) and Geli (P.W.6) went to Salandi river to wash utensils and after sometime, Rina and Geli left her alone. While she was washing the utensils, the accused called her, however she did not respond to him. The accused came near her and snatched away the utensils from her and put a napkin on her face. Then the accused made her lie on the ground and insert his private part in her private part and immediately she lost her senses.



The accused sprinkled water on her face then she regained her senses. The accused offered money not to disclose the incident. On that day, out of fear she did not inform the incident to anyone. But while he was in her house, she sustained pain on her lower part of the belly. On asking of her mother regarding the sustained pain on her belly, she had disclosed the incident to her mother. Then her mother lodged the FIR. P.W.5 and P.W.6, those who had accompanied the victim did not support the case of the prosecution and both of them deposed that they do not know anything about the incident. P.W.8 is the doctor, who examined the victim did not find any injury on the vaginary part of the victim and she has also opined that she did not find any sign and symptom of recent sexual intercourse, but at the same time she has deposed that sexual intercourse cannot be ruled out.

8. Relying upon the aforementioned evidences, Mr. Zafarulla, learned counsel for the appellant submitted that there is a fair chance of the appeal being succeeded, if the same is heard finally. However, the appeal is pending since 2019 and there is no scope of the appeal being heard in the near future because of the heavy board of this Bench.



9. The State Counsel as well as the counsel for the informant/victim opposed the grant of bail to the appellant on the ground that the unequivocal testimony of P.W.1 and the other ocular evidence of the witnesses, namely, the mother of the victim, and other witnesses directly pointed to the guilt of the appellant. Hence, no leniency should be shown to the appellant.

10. We have taken into consideration the evidence on record and also analyzed the judgment. Although we are not inclined to grant suspension of the sentence awarded against the appellant pending appeal on merits, but regard being had to the period of custody of the appellant for more than ten years and his jail conduct, we are inclined to apply the ratio of the judgment of this Court in the case of ***Leti @ Jayadeb Roy and Another v. State, reported in (1990) 3 Orissa Criminal Reports 427*** and grant the appellant on interim bail for a period of three months. The Hon'ble Supreme Court in ***Leti @ Jayadeb Roy and Another*** (supra) held that the mandate of Article 21 of the Constitution of India requires a liberal approach in considering the prayer for bail of convicts whose appeals remain pending for long periods on account of non-disposal, and that in



ordinary cases such convicts may initially be enlarged on bail for a temporary period of three months to assess their conduct, subject, however, to denial of such benefit in exceptional cases having regard to the nature of the offence, antecedents of the convict or other special reasons, each case being decided on its own facts and circumstances. It was held thus:-

"21. Stage has reached to express our view on the question whether the convicts who have been in jail for three years because of non-disposal of their appeals could claim their release on bail with the aid of Art. 21 of the Constitution? According to us, Art. 21 demands that the cases of such convicts have to be liberally viewed while examining the question of their release on bail and in run-of-mill cases enlargement on bail in the first instance for a temporary period of say three months for cogent personal reasons may not be refused. We have mentioned about temporary release in the first instance, to enable all concerned to watch the performance of the convict during the interregnum. If it would be found that he has misused the liberty, the period of his release on bail would not be enlarged. If, however, there be nothing against the convict, he would merit release on bail till the disposal of his appeal. Of course, for special reasons, which would include the nature of the crime and the antecedents of the convict, the benefit of release on bail even for a temporary period may be denied. The types of cases in which this benefit should be denied cannot be laid down



exhaustively but should be akin to those about which reference has been made earlier. This apart, if the character and antecedent of the convict be such as would give grounds to believe that his release on bail may not be safe, he too may be denied the protective shield of Art. 21."

Keeping in view the aforesaid principles, the prolonged period of incarceration and the satisfactory jail conduct of the appellant, we are inclined to release the convict-appellant on interim bail for a period of three months from the date of his actual release.

11. For the above period, let the convict-appellant be released on interim bail in the aforesaid case on furnishing bail bond of Rs.50,000/-(rupees fifty thousand) with one local solvent surety for the like amount to the satisfaction of the learned trial Court, subject to condition that while on interim bail the appellant-petitioner shall not indulge in any criminal activities in any manner and any other condition to be imposed by the learned trial court as deem fit and proper in the facts and circumstances of the case. The convict-appellant shall surrender before the learned court below immediately on expiry of the interim bail period of three months.

12. Violation of any of the terms and conditions shall entail cancellation of the interim bail.



- 13.** Accordingly, the I.A. is disposed of.
- 14.** Issue urgent certified copy of this order as per rules.

(Manash Ranjan Pathak)
Judge

(Sibo Sankar Mishra)
Judge

CRLA No. 604 of 2019

- 08.** **1.** List this matter after three months.
- 2.** Learned counsel for the appellant shall file the Surrender Certificate of the appellant on the next date of hearing.

(Manash Ranjan Pathak)
Judge

(Sibo Sankar Mishra)
Judge