

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No. 716 of 2021

Bipin Suna

***.... Appellant/
Petitioner***

Mr. R.L. Pattnaik, Advocate

-versus-

State of Odisha

***.... Respondent/
Opp. Party***

*Mr. Arupananda Das
Addl. Government Advocate*

**CORAM:
JUSTICE S.K. SAHOO**

**ORDER
18.07.2022**

I.A. No.1290 of 2021

Order No.

06. This matter is taken up through Hybrid Arrangement (Video Conferencing/Physical Mode).

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

Heard.

The appellant-petitioner has been convicted under sections 376(3) of the Indian Penal Code and section 4 of the POCSO Act and sentenced to undergo R.I. for a period of twenty years and to pay a fine of Rs.10,000/- (rupees ten thousand), in default, to further undergo R.I. for a period of six months for the offence under

section 376(3) of the Indian Penal Code and no separate punishment is awarded under section 4 of the POCSO Act in view of section 42 of the POCSO Act by the learned Ad-hoc Additional Sessions Judge (FTSC), Koraput, Jeypore in T.R. Case No.26 of 2019 (T.R. No.94 of 2021 (FTSC)).

Perused the impugned judgment.

Learned counsel for the State submitted that notice on the victim has been made sufficient and as per the report of the Inspector in-charge of Koraput Town police station, there is no criminal antecedent against the petitioner and the victim has eloped with another boy. The report of the Inspector in-charge of Koraput Town police station is taken on record.

Learned counsel for the petitioner submitted that the petitioner is a young boy aged about twenty years and he was on bail during trial and there is no material that he has mis-utilised his liberty while on bail. He further submitted that the evidence of the doctor (P.W.2) indicates that there was no bodily injury detected on the body of the victim or on her private part, no sign or symptom of recent sexual intercourse was found and no spermatozoa was found on the private part of the victim. It is further submitted that though the victim being examined as P.W.5 stated that she had been to village Badaliguda to purchase her dress and while returning, the occurrence took place but the Investigating Officer has

stated that there was no dress shop in village Badaliguda which improbably makes the story of the victim and therefore, the bail application of the petitioner may be favourably considered.

Learned counsel for the State, on the other hand, drew the attention of this Court to the finding of the learned trial Court in paragraph-6 of the impugned judgment from which it appears that the victim girl was below fifteen years of age as on the date of occurrence. The learned counsel further submitted that the occurrence in question took place on 10.02.2019 and the F.I.R. was lodged on 14.02.2019 and the victim was examined by the doctor (P.W.2) on 15.02.2019 and therefore, in view of the time gap between the date of occurrence and the date of medical examination, whether the evidence of the victim will be discarded on the basis of medical evidence would be decided at the time of final hearing of the appeal but in view of the available material on record, the bail should not be granted.

Considering the submissions made by the learned counsel for the respective parties, the nature of evidence adduced by the prosecution during trial and the age of the victim at the time of trial, while not inclining to release the petitioner on bail, it is observed that the petitioner is at liberty to renew the prayer for bail if after serving half of the substantive sentence, the appeal is not taken up for hearing.

Accordingly, the I.A. is disposed of.

**(S.K. Sahoo)
Judge**

I.A. No.1289 of 2021

07. 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 on proper application.

**(S.K. Sahoo)
Judge**

RKM

