
Jitendra Ojha @ Mitu Vs State Of Odisha

Bail Application No. 7100 Of 2023

Court: Orissa High Court

Date of Decision: Aug. 18, 2023

Acts Referred:

Code of Criminal Procedure, 1973 " Section 82, 439#Indian Penal Code, 1860 " Section 174A, 229A, 363, 366, 376(2)(n), 376(3)#Protection Of Children from Sexual Offences Act, 2012 " Section 6, 35(2)

Hon'ble Judges: G. Satapathy, J

Bench: Single Bench

Advocate: S. Palit, S.S. Pradhan, P.S. Nayak

Final Decision: Disposed Of

Judgement

Ã, G. Satapathy, J

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).

2. This is a bail application U/S.439 of Cr.P.C. by the petitioner for grant of bail in connection with Kalinganagar P.S. Case No.140 of 2022 arising out

of C.T. Spl. (POCSO) Case No.72 of 2022 pending in the file of learned Additional District and Sessions Judge-cum-Special Court under POCSO

Act, Jajpur, being charge-sheeted for commission of offence punishable under Sections 363/366/376(2)(n)/376(3) of IPC read with Section 6 of

POCSO Act, on the allegation of kidnapping the victim and committing rape and aggravated penetrative sexual assault upon her.

3. In the course of hearing of the bail application, Mr. S. Palit, learned Senior Counsel for the petitioner by placing the deposition of the victim, submits

that the petitioner has already been in custody for more than one year, but the trial is yet to be completed, no matter only five witnesses have been

examined. Learned Senior Counsel further submits that although the victim has been described as a minor, but there is no role on the part of the

petitioner to kidnap the victim or commit any sexual assault upon her, rather the petitioner has been falsely implicated in this case. It is also submitted

by him that the materials placed on record could not disclose any case against the petitioner and the victim having already been examined in this case,

there remains no apprehension for tampering of evidence by the petitioner. On these grounds, learned Senior Counsel for the petitioner prays to grant

bail to the petitioner.

4. On the other hand, Mr. S.S. Pradhan, learned AGA, however, strongly opposes the bail application of the petitioner by submitting inter alia that the

victim was aged about 13 years at the relevant time of occurrence and, therefore, the bail application of the petitioner deserves to be rejected.

5. On the other hand, Mr. P.S. Nayak, learned counsel for the informant, however, strongly opposes the bail application of the petitioner by contending

inter alia that since, the victim was less than 14 years, her consent was immaterial and he by specifically drawing attention of the Court to the question

put forth to the victim by the learned trial Court and the answer given by the victim to such question, submits that there is ample threat from the side of

the petitioner to the victim and, therefore, the petitioner should not be granted bail.

6. At the outset, this Court is informed that the petitioner has been detained in custody since 10.07.2022 and in the meanwhile, more than a year has

elapsed, but the trial is yet to be concluded and only five witnesses have been examined till today. Section 35(2) of POCSO Act mandates that trial

shall be concluded as far as possible within a period of one year from the date of taking cognizance of offence.

7. In view of the above facts and after having considered the rival submissions made and taking into consideration the nature and gravity of

accusations raised against the petitioner and keeping in view the mode and manner of implication of the petitioner in this case and taking into account

the progress of trial including examination of the victim, which persuades this Court for considering little apprehension of tampering of evidence of

material witnesses and last but not the least, taking into account the pre trial detention of the petitioner since more than a year and the principle that

bail is the rule, but jail is the exception and regard being had to the mandate of Section 35(2) of POCSO Act, this Court admits the petitioner to bail.

8. Hence, the bail application of the petitioner stands allowed and the petitioner is allowed to go on bail on furnishing bail bonds of Rs.1,00,000/-

(Rupees One Lakh) only with two solvent sureties each for the like amount to the satisfaction of the learned Court in seisin of the case on such terms

and conditions as deem fit and proper by it with following conditions:-

(i) the petitioner shall not commit any offence while on bail,

(ii) the petitioner shall appear before the Court in seisin of the case on each and every date of posting without fail unless his attendance is dispensed with. In case

the Petitioner fails without sufficient cause to appear in the Court in accordance with the terms of the bail, the learned trial Court may proceed against the

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