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HIGH COURT OF ORISSA, CUTTACK

BLAPL No.4893 of 2020

(In the matter of applications under Section 439 of the Criminal Procedure Code, 1973)

Ananda Chandra Majhi ... **Petitioner**

Versus

State of Odisha ... **Opposite Party**

For Petitioner : M/s. Soura Chandra Mohapatra,
P. Mohapatra, S. Mohapatra,
S.A. Hafiz, M. Pradhan and
P.K. Sahoo, Advocates

For Opposite Party : Mr. Karunakar Gaya,
Additional Standing Counsel

PRESENT:

THE HONOURABLE SHRI JUSTICE S.K. PANIGRAHI

Date of Hearing: 19.08.2021 सत्यमेव जयते **Date of judgment: 06.09.2021**

S. K. Panigrahi, J.

1. The petitioner is in custody in connection with CID, Crime Branch Police Station Case No.5 dated 29.06.2020 which was initially registered as Raiboga P.S. Case No.41 of 2020 corresponding to Special G.R. Case No.88 of 2020 pending before the court of the learned Additional Sessions Judge-cum-Special Judge, Sundargarh, registered for the alleged commission of offences under Sections 313, 376(2)(n), 376(3) of IPC and under

Section 6 of the POCSO Act, has filed this application under Section 439 of Cr.PC for his release on bail.

2. The prosecution story is based on the written report lodged by Sibanta Jena, District Child Protection Officer, before the OIC, Raiboga Police Station. It has been disclosed therein that a minor girl ('Victim') aged about 13 years was produced before the CWC by the police personnel of Biramitrapur P.S. on 15.06.2020 after which she was handed over to open shelter home. While staying in the said shelter home, she complained of body pain, and accordingly, she was shifted to Bisra CHC and later referred to Rourkela Government Hospital for better treatment. During her counselling in the said shelter home, she disclosed before the staff that she was pregnant for three months and her abortion was carried out by the doctor of Biramitrapur CHC-II on 15.06.2020. The victim further disclosed that she was impregnated by her boyfriend Sagar who was working in Mumbai and her stepfather who is staying in Delhi. The FIR further discloses that on 20.06.2020, she was again impregnated by her boyfriend Rohit. On 22.06.2020, she alleged before the CWC, Sundargarh that one Bada Babu of Biramitrapur P.S. was keeping sexual relationship with her for last three months and further added that one male staff of said P.S. has once kept sexual relationship with her. The petitioner is the IIC of Biramitrapur P.S. and the FIR

has been registered against him in view of the contention that the petitioner is the 'Bada Babu' as referred by the victim.

3. Learned counsel for the petitioner submits that charge-sheet has already been filed and there is no criminal antecedent against the petitioner. He submits that the petitioner is in no way connected with the case in any manner and the victim is apparently a mentally unstable nomadic girl who has changed her statements from time to time. He further submits that the statement of the victim has been recorded by various authorities and there are several inconsistencies in each of them. Moreover, when the CID, CB took up investigation of the case, she gave a completely different statement contradicting her previous statements on the basis of which the petitioner was taken into custody.

4. Additionally, learned counsel submits that during the course of investigation, it was revealed from the statement of the victim that she used to put up at different places and reside in different houses as per her will. Hence, in view of the above prevaricating statements of the victim, her subsequent allegation regarding the commission of rape and abortion at the instance of the petitioner cannot be believed nor it can be said that there is a *prima facie* material to connect the petitioner in the alleged crime.

5. Through the note of submissions, learned counsel submits that there are different instances where the prevaricating statements of the victim are self-contradictory to each other. He further submits that the victim has changed the identity of the person responsible for her pregnancy several times in different statements. Further, the investigation agency did not conduct any T.I. parade to ascertain whether the petitioner is the author of the crime whereas the victim has clearly stated that she can identify the same person if shown to her.

6. Learned counsel for the State has vehemently opposed the petitioner's prayer for bail.

7. Heard learned counsel for the parties. It is well settled that version of the victim-prosecutrix in the facts and circumstances of a case may be accepted without any corroboration, since the evidence of rape victim is more reliable even that of an injured witness. Furthermore, it has also been laid down that minor contradictions and discrepancies are insignificant and immaterial. However, if there are material discrepancies in the statements of the victim as well as lack of corroboration, it will be highly dangerous for the Court to rely on such version of the prosecutrix in order to support the case of the prosecution. In the decision reported in **Krishan**

Kumar Malik v. State of Haryana¹ in respect of the offence of gang rape under Section 376 (2) (g), IPC, it has been held as under in paras 31 and 32:

“31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellant guilty of the said offences.

32. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and deposition in court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not examined and later given up by the public prosecutor on the ground that she has been won over by the appellant.”

Similarly, in the case of **Rai Sandeep @ Deepu vs State of Nct of Delhi**², the Hon’ble Supreme Court has iterated that:

“22. As compared to the case on hand, we find that apart from the prosecutrix not supporting her own version, the other oral as well as forensic evidence also do not support the case of the prosecution. There were material contradictions leave alone lack of corroboration in the evidence of the prosecutrix. It cannot be said that since the prosecutrix was examined after two years there could be variation.

¹ 2011(7) SCC 130

² (2012) 8 SCC 21

Even while giving allowance for the time gap in the recording of her deposition, she would not have come forward with a version totally conflicting with what she stated in her complaint, especially when she was the victim of the alleged brutal onslaught on her by two men that too against her wish. In such circumstances, it will be highly dangerous to rely on such version of the prosecutrix in order to support the case of the prosecution.”

Further, in the case of **Santosh Prasad vs. the State of Bihar**³, the Hon’ble Supreme Court has laid down that:

“6. Having gone through and considered the deposition of the prosecutrix, we find that there are material contradictions. Not only there are material contradictions, but even the manner in which the alleged incident has taken place as per the version of the prosecutrix is not believable. In the examination-in-chief, the prosecutrix has stated that after jumping the fallen compound wall Accused came inside and thereafter the Accused committed rape..... The manner in which the occurrence is stated to have occurred is not believable. Therefore, in the facts and circumstances of the case, we find that the solitary version of the prosecutrix-PW5 cannot be taken as a gospel truth at face value and in the absence of any other supporting evidence, there is no scope to sustain the conviction and sentence imposed on the Appellant and Accused is to be given the benefit of doubt.”

8. Several High Courts in different cases including **Satish Chand vs State of U.P.**⁴ and **Sunil Kumar and Anr. vs State**⁵ have opined that material inconsistency in the statements of the victim in the matters of bail can be a ground to grant bail to the accused.

³ (2020) 3 SCC 443.

⁴ CRIMINAL MISC. BAIL APPLICATION No. - 39107 of 2017 (Allahabad High Court)

⁵ B.A No. 132/2017 (Jammu and Kashmir High Court)

9. In the present case, the victim's counselling report, a part of case No.133/CWN/SNG/2020, disclosed in the first round of counselling that she was pregnant by four months when she went to 'Bada Babu' of Biramitrapur P.S. who helped her a lot and took her to the hospital where the abortion was conducted by the doctor. If the entirety of the victim's statements, both under Section 161 Cr.PC and Section 164 Cr.PC including her counseling report are taken into consideration, she has held different persons responsible for her pregnancy. Furthermore, the accused persons namely, Rohit, Sagar and the stepfather of the victim who were earlier implicated by the victim in the FIR have been exonerated by the I.O.

10. Similarly, in her statement under Section 164 Cr.PC, the victim has accused the Biramitrapur Thana Babu whereas in her statement under Section 161 Cr.PC, she has accused the Thana Bada Babu of Biramitrapur P.S. Therefore, the petitioner has not been named in the FIR but has been implicated on the basis of victim's referral to 'Thana Bada Babu'. Even though the victim stated that she can identify the said person if shown to her but strangely no Test Identification parade was conducted to arrive at the conclusion that the petitioner is the author of the crime. Though Test Identification parade is not an absolute necessity for the conviction of the accused, however, in a case where the name of the accused has not been clearly mentioned, the I.O. should have

conducted the Test Identification parade for surety. Therefore, the prevaricating statements of the victim and lack of corroboration make out a good case for bail to the Petitioner.

11. Considering the submissions made and facts and circumstances of the case, it is directed that the petitioner be released on bail in the aforesaid case with some stringent terms and conditions as deemed just and proper by the learned court in seisin over the matter with further conditions that:-

- i.** the petitioner shall appear before the learned trial court on each date of posting of the case;
- ii.** he shall not indulge in similar activities in future and
- iii.** he shall not tamper the evidence of the prosecution witnesses nor shall he intimidate, coerce or threaten the victim in any manner.

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

13. The Bail Application is accordingly disposed of.

(S.K.Panigrahi)
Judge