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**HIGH COURT OF ORISSA: CUTTACK**

**BLAPL Nos.5656 & 5888 OF 2020**

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

**Pama @ Pramod Dehury ... Petitioner**

Versus

**State of Odisha & another ... Opposite Parties**

**For Petitioner** : M/s. Amitav Tripathy, M. Pagal,  
K.C. Sahoo and A.K. Behera,  
Advocates

**For Opp. Parties** : Mr. S.S. Kanungo,  
Additional Government Advocate

**PRESENT**

**THE HONOURABLE SHRI JUSTICE S.K. PANIGRAHI**

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**Date of Hearing: 18.02.2021      Date of judgment: 01.03.2021**

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1. ***“Abuse is never contained to a present moment, it lingers across a person’s lifetime and has pervasive long-term ramifications”***

penned down by the author Lorraine Nilon who has explored plight of child sexual abuse as a matter of great concern, articulates the predicament of the matter-at-hand. A crime of such heinous intent and grave nature needs to be punished with a stringent law that comprehends the intricacies of the situation. Plethora of judgments by the Apex Court has succinctly held that the POCSO Act has been framed to protect the children from the sexual assault, harassment and exploitation, and to secure the best interest of the child. The Act

recognizes the necessity of the right to privacy and confidentiality of a child to be protected and respected by every person by all means and through all stages of a judicial process involving the child.

- 2.** BLAPL No.5656 of 2020 and BLAPL No.5888 of 2020 being similar in facts, nature of offence committed and the involvement of the same person, hence both are heard analogously and taken up together for disposal by this common judgment.
- 3.** The petitioner has filed the instant application under Section 439 of CrPC seeking bail in connection with Fatehgarh P.S. Case No.85 of 2018 corresponding to T.R. Case No.63 of 2018 pending before the learned Additional Sessions Judge-cum-Special Court under POCSO Act, Nayagarh. The petitioner herein is the accused in connection with alleged commission of offences punishable under Sections 342 and 376(AB) of I.P.C. read with Section 10 of the POCSO Act.
- 4.** The case of the prosecution, in short, is that on 24.04.2018 at about 2.00 P.M. while the victim was moving alone in the village, the petitioner tried to lure the minor victim by directing her to bring mixture for him from the village shop. When the victim returned empty handed, the petitioner in course of conversation with her, took her inside his house and raped her by forcibly keeping her mouth shut. The victim started crying loudly, hearing which some of her sisters came and found the house locked from inside. Getting concerned about the situation, they intimated the mother of the victim. Accordingly, her mother came and knocked the door of the petitioner and called him. Hearing no response, she smashed the

door clip and found her daughter in a precarious condition while the petitioner was trying to commit sexual act upon the victim. She rescued her daughter and intimated the situation to her husband (complainant).

- 5.** The petitioner has also filed BLAPL No.5888 of 2020 under Section 439 of CrPC seeking bail in connection with Fatehgarh P.S. Case No.87 of 2018 corresponding to T.R. Case No.08 of 2019 pending before the learned Additional Sessions Judge-cum-Special Court under POCSO Act, Nayagarh. The petitioner herein is the accused in connection with alleged commission of offences punishable under Sections 376(2)(i) of I.P.C. read with Section 10 of the POCSO Act.
- 6.** The case of the prosecution is that on 27.04.2018 at about 9.30 A.M., the informant Bhagabat Dehury lodged a written report before the Police alleging therein that the present petitioner committed sexual intercourse with his minor daughter. It is a matter of great concern that the petitioner committed a similar act just three days prior to this incident on the another minor daughter of the complainant. Thereafter, the complainant lodged the FIR for necessary legal action.
- 7.** Heard Mr. Amitav Tripathy, learned Counsel appearing for petitioner, Mr. S. S. Kanungo, learned Additional Government Advocate for prosecution and perused the case records.
- 8.** Learned Counsel for the petitioner has submitted that the petitioner is an innocent person and has been falsely implicated in this case by the Police due to some prior grudge. Further, in absence of any cogent materials, the prosecution has failed to establish a prima facie

case against the petitioner. Further, the allegations as stated in the FIR are omnibus in nature and there is absolutely no allegation of any specific overt act against the present petitioner. Hence, the petitioner should be granted bail.

- 9.** In the report submitted by the IIC, Fatehgarh P.S. dated 26.04.2018, he has submitted that in course of examination of the mother of the victim, it came to light that the accused has also tried to exploit the elder daughter of the complainant. Further, the ages of both the victims have been verified and they are found to be minors from the School reports. The local witnesses and villagers have proved the complicity of the petitioner in this case as many of them were present when the complainant's wife rescued the victim. It has further been submitted that the petitioner appears to be habitual child abuser and targets children for sexual purposes though he is a married person and has no offspring.
- 10.** Medical Officer, Dr. Pradeep Kumar Paikray, who examined the victim, has opined that there were no recent signs or symptoms or bodily injuries suggestive of sexual intercourse.
- 11.** It is well settled that the victim of a sexual assault is not an accomplice. Nor is it an immutable rule of law that the testimony of a survivor cannot be acted without corroboration in material particulars. The injury suffered by the minor victim of a sexual abuse is deeply physical, psychological and emotional. In a given case, if the Court finds it difficult to accept the version of the victim, on its own, the Court would be justified in searching for evidence, direct or

circumstantial, which lends assurance to her testimony. Such assurance, short of corroboration, is sufficient. The Bombay High Court in the case of **Fazal Mehmud Jilani Dafedar vs State of Maharashtra**<sup>1</sup> relied on the judgment of the Supreme Court in the case of **Mohd. Imran Khan v. State Government (NCT of Delhi)**<sup>2</sup> wherein the legal position was postulated as under:

*“22. It is a trite law that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust. The prosecutrix stands at a higher pedestal than an injured witness as she suffers from emotional injury. Therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Evidence Act, 1872 (hereinafter called “the Evidence Act”), nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 of the Evidence Act and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to Illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an*

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<sup>1</sup>Criminal Appeal No. 845 of 2017 Bombay HC.

<sup>2</sup>(2011) 10 SCC 192

*accomplice. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.*

**23.** *The court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations. Rape is not merely a physical assault, rather it often distracts the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence.”*

**24.** *Thus, the law that emerges on the issue is to the effect that statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix.”*

**12.** Further, it is also a well settled principle of law that the testimony of child witness can be relied upon along with other circumstances and corroborative evidence to convict the accused. Undoubtedly, the settled proposition of law that the evidence of a child witness is required to be scrutinized and appreciated with great caution. In this regard, reference can be made to the dicta of the Apex Court in the

case of **Yogesh Singh Vs. Mahabeer Singh**<sup>3</sup> wherein the Apex Court has held that:

*"22. It is well settled that the evidence of a child witness must find adequate corroboration, before it is relied upon as the rule of corroboration is of practical wisdom than of law.*

*23. However, it is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus a child witness is an easy prey to tutoring."*

**13.** The Supreme Court in the case of **Radhakrishna Nagesh vs. State of Andhra Pradesh**<sup>4</sup> has iterated that even if there is no penetration, it does not necessarily mean that there is no rape. It further stated that -

***"25. ....Penetration itself proves the offence of rape, but the contrary is not true i.e. even if there is no penetration, it does not necessarily mean that there is no rape. The Explanation to Section 375 of the Indian Penal Code has been worded by the legislature so as to presume that if there was penetration, it would be sufficient to constitute sexual intercourse necessary for the offence of rape. Penetration may not always result in tearing of the hymen and the same will always depend upon the facts and circumstances of a given case. The Court must examine the evidence of the prosecution in its entirety and then see***

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<sup>3</sup> AIR 2016 SC 5160.

<sup>4</sup>(2013)11SCC688.

*its cumulative effect to determine whether the offence of rape has been committed or it is a case of criminal sexual assault or criminal assault outraging the modesty of a girl.”*

- 14.** The Bombay High Court denied to grant bail to a person accused under POCSO Act in the case of **Amit Raoso Patil vs State of Maharashtra**<sup>5</sup> stating that-

**“13. “Rape” is just not a forcible intercourse, it means to inhabit and destroy everything.** *The applicant is seeking release on bail awaiting the trial. Considering the gravity of the accusation leveled against him and the testimony of the victim, which would be unfurled at the time of trial and in view of the aforesaid position emerging from the submission of the learned counsel for the applicant based on the material on record, I am not inclined to release the applicant on bail. The observations made in the order are prima facie in nature, based on the material placed for consideration for a limited purpose of consideration of bail application and should not be considered as an expression/opinion on the merits of the matter at the time of trial.”*

- 15.** In the instant case, the investigation is still going on. From perusal of the FIR, it appears that offences under the Indian Penal Code, are definitely made out, which may be required to be further investigated. A perusal of the FIR and charge sheet filed in the present cases shows that there are very specific allegations against the Petitioner, who is the same person in both the cases arrayed as an accused. It is not, as if, the allegations are casual and sweeping against all the accused

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<sup>5</sup>Bail Application No. 1813 of 2020 Bombay HC.



generally. Moreover, in the report submitted by the IIC, Fatehgarh P.S. dated 26.04.2018, he has mentioned that the accused has also tried to exploit the elder daughter of the complainant. He further attempted to rape the minor victim just three days after the complainant lodged the first FIR. The petitioner seems to be a habitual sexual offender and should not be granted bail at least until the investigation is complete.

- 16.** There are numerous other allegations as well in the charge sheet which are very detailed and need not be reproduced since the above extracts are sufficient to indicate that the allegations are specific and not of a general nature. Upon a reading of the FIR and the charge sheet as a whole, it is not possible to come to the conclusion that they do not make out even a prima face case against the Petitioners for the offences in question. Moreover, the allegations are specific qua each of them.
- 17.** In view of the above, I am not inclined to allow the prayer for bail of the petitioner in both the bail applications. Accordingly, both the bail applications are dismissed.
- 18.** However, the petitioner will be at liberty to raise all the points, already raised in these petitions, at the time of framing of the charge, which will be considered by the trial court concerned by passing a reasoned order.

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**S. K. Panigrahi, J.**