

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.2994 of 2023

Jagannath Nag and Others

....

Petitioners

Mr. Bhabani Shankar Dasparida,
Advocate

-versus-

State of Odisha

....

Opp. Party

Mr. D. Biswal, ASC

**CORAM:
JUSTICE CHITTARANJAN DASH**

**ORDER
05.05.2023**

Order No.

02. 1. Heard learned counsel for the Petitioners and the State.
2. By means of this application, the Petitioners seek grant of bail U/s.438 Cr.PC in apprehension of arrest for their alleged involvement in the offences U/s.376(2)(n) of IPC, Section 6 of POCSO Act and Sections 9/11 of Prohibition of Child Marriage Act, 2006 in connection with Binika PS Case No.168 of 2022 corresponding to Special GR Case No.16 of 2022 pending in the court of learned Additional Sessions Judge-cum-Special Judge, Sonapur.
3. Learned Sr. Counsel Mr. Dhal submits that the victim was major on the date of occurrence. According to him, the date of birth of the victim is 16.02.2002 and the marriage took place on 13.05.2021. He further submits that the marriage of the victim took place with Balek Charan Nag and out of the wedlock, the victim was blessed with a

male child on 05.12.2021 and as such there is nothing to bring the Petitioners with the ambit of offence under Section 6 of the POCSO Act or Sections 9/11 of the prohibition of Child Marriage Act. It is also submitted by learned counsel for the Petitioners that the Charge-Sheet though has been filed in the offence under Section 6 of the POCSO Act read with Section 9/11 of the Prohibition of Child Marriage Act, the learned court took cognizance in the offence under Sections 376(2)(n) of IPC read with Section 6 of the POCSO Act read with Sections 9/11 of Prohibition of Child Marriage Act, 2006. According to the learned counsel, the marriage of the victim with the Petitioner No.3 being legal and valid, the offence U/s. 376 (2) (n) IPC does not apply. The said offence, however, cannot be attributed at least against the Petitioners No.1 & 2 who are parents vis-à-vis Petitioner No.3.

4. It is submitted by learned counsel for the State that the victim married to the Petitioner No.3-Balek Charan Nag before she attained majority while she was ages 17 years 4 months and 20 days and got impregnated and delivered a child on 05.12.2021. According to learned counsel, the Project Officer, Integrated Child Development Department conducted visit to the house of the Petitioners and found the Petitioners No.1 & 2 to be present there. He also submitted that the act alleged against the Petitioners being not an approved and legal act are amenable to the offence alleged.

5. The submission made from the side of the Petitioners as well as the learned counsel for the State requires proper analysis of the date of cause of action and the age of the victim in order to appreciate the

allegations against the Petitioners. Admittedly, the offence under Section 6 of the POCSO read with Sections 9/11 of Prohibition of Child Marriage Act, 2006 have been alleged against the Petitioners. The cognizance taken by the court below in the offence 376(2)(n) may be attributed to the Petitioners No.3-Balek Charan Nag but seems not proper against the Petitioners No.1 & 2.

6. Be that as it may, the Petitioners having been arrayed under the offence under POCSO Act, it is not desirable for this Court to grant anticipatory bail while disposing the application. However, it is directed that in the event the Petitioners surrender and move for bail, the learned Court in seisin over the matter shall dispose of the same on its own merit being alive of the position of law on bail and keeping in view the gravity of the offences, as far as possible taking into consideration the materials on record as well as other documents available on record. The court shall apply its wisdom in allowing or rejecting the bail. The ABLAPL is disposed of accordingly.

(Chittaranjan Dash)
Judge

AKPradhan