



IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.9430 of 2024

Ankita Pradhan

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Petitioner

Represented By Adv. –
Mr.Y.Dash, Sr.Advocate

-versus-

State Of Odisha

.....

Opposite Parties

Represented By Adv. –
Mr.B.K.Ragada, AGA

CORAM:

**THE HON'BLE MR. JUSTICE ADITYA KUMAR
MOHAPATRA**

ORDER

18.09.2024

Order No.

01.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Although this matter was not on Board today, however in the first hour Mr.Y.Dash, learned senior counsel appearing for the Petitioner mentioned for early listing of the matter. It was brought to the notice of this Court that the victim in this case is a young lady and has suffered in the hands of police and has also sustained injuries.
3. Mr.Dash, learned senior counsel appearing for the Petitioner at the outset submitted that she was brutally assaulted by the Police personnel in duty at Bharatpur Police Station, as a result of which she has sustained grievous injury. He further contended that yesterday the matter was mentioned



before Hon'ble Mr.Justice S.S.Mishra and on the basis of the verbal order, the victim was shifted to AIIMS, Bhubaneswar where she was undergoing treatment at the moment. On hearing learned counsel for the Petitioner this Court could realise the gravity and seriousness of the matter. Accordingly, the Registry of this Court was directed to place the matter before this bench at 1 P.M. However the matter could not be notified or placed before this Court at 1 P.M.

4. Mr.Pitambar Acharya, learned Advocate General, Odisha who was present in Court at 1 P.M., submitted before this Court that drastic action has been taken in the present matter against the erring police officers, after getting a complaint, some of them have been transferred and some of them were put under suspension and proceeding have been initiated against them. He further submitted that the matter is being enquired into by the high level Police Officers and appropriate action shall be taken against the Officers who are found guilty.

5. Since the matter could not be listed, the Deputy Registrar was summoned to the Court to enquire as to why the matter could not be listed. The Deputy Registrar submitted that since the matter was filed with defects, as such the matter was not assigned any registration number, therefore, the mater could not be listed. However, in the meantime the defects have been removed by the associates of Mr.Y.Dash, learned senior counsel appearing for the Petitioner. Thereafter the matter has been listed today by way of a special notice.

6. Heard Mr.Y.Dash, learned senior counsel appearing for the Petitioner and Mr.B.K.Ragada, learned Additional Government Advocate. Perused the case records as well as



the materials filed along with the bail application.

7. Mr.Y.Dash, learned senior counsel appearing for the Petitioner at the outset submitted that as per the FIR allegation the occurrence took place on 15.09.2024 in the mid night between 2 a.m. to 7 a.m. The F.I.R. was lodged by one Baisalini Panda stated to be the A.S.I. of Police of Bharatpur P.S. on 15.09.2024 inter alia alleging that while they were on patrolling duty at about 3.30 A.M. she received a call from the A.S.I. from the Police Station intimating her that a young lady and a young man who were present in the Police Station are creating ruckus in the Police Station. Thereafter the informant rushed to the Police Station along with her staff, who were on patrolling duty. On reaching the Police Station the informant asked the Petitioner and her friend as to what has happened. However they both did not listen to her and abused her in filthy languages. It has also been alleged that the accused persons started assaulting the informant as well as the A.S.I. present in the Police Station. After some time another Police staff namely Sagarika Rath also arrived at the Police Station and tried to prevent both the accused persons from uttering any obscene words. It is alleged that she was assaulted by the accused persons. It has also been alleged in the F.I.R. that as a result of a bite given by the Petitioner said Sagarika Rath sustained bleeding injury on her hand. Furthermore, it has also been alleged that the present Petitioner damaged some property like Laptop etc. With the aforesaid allegation the present F.I.R. has been registered by implicating the present Petitioner and another as accused in this case.

8. Mr.Dash, learned counsel for the Petitioner stated that



the Petitioner, who is a young lady and practising lawyer and happens to be the daughter of a Brigadier of the Indian Army, had come to the Police Station to lodge a complaint against some culprits involved in road rage case which has occurred while they were returning to their residence. However, instead of registering the complaint that has been lodged by the Petitioner, the Police personnel present in the P.S. started misbehaving and assaulting the Petitioner and her friend Major Guruvansh Singh Ghosal and they both were kept in Police lock up for several hours illegally. Mr.Dash, learned senior counsel further submitted that the present Petitioner has been brutally assaulted in the Police Station by the Police personnel present in the Police Station. He further contended that at the moment the Petitioner is undergoing treatment at AIIMS, Bhubaneswar on the intervention of the coordinate Bench of this Court and that her condition is critical.

9. Further referring to the offences alleged in the F.I.R. i.e. for commission of offence punishable under sections 126(2) 115(2), 296, 324(2), 118(1), 74, 132, 351(3, 3(5) of B.N.S.-2023. Learned senior counsel for the Petitioner contended that the Petitioner should have been released under section 35(3)(4)(5) of BNSS, 2023 by following the guidelines of the Hon'ble Supreme Court both in the case of **Arnesh Kumar-v.- State of Bihar** reported in **AIR 2014 SC 2756** as well as **Satender Kumar Antil v. Central Bureau of Investigation & anr.** reported in **2022 LiveLaw (SC) 577**. However the Petitioner was illegally forwarded to the Court and her application for bail before the learned J.M.F.C.-V, Bhubaneswar having been rejected by a cryptic two lines



order, the Petitioner has approached this Court by filing the present application under section 483 BNSS, 2023.

10. He further contended that although the jurisdiction under section 483 BNSS, 2023 is concurrent i.e. the bail application can very well be entertained by the District & Sessions Judge as well as by this Court, however keeping in view the blatant illegality and violation of fundamental right of the citizens, the Petitioner was not left with any other option than to approach this Court by filing the present application under section 483 of BNSS, 2023.

On a careful examination of the 483 BNSS, 2023 this Court is of the considered view that although the jurisdiction is concurrent, however as a matter of practice, the accused is required to approach the learned Sessions Judge first, thereafter on rejection of his application by the Sessions Judge, the accused person is to approach this Court by filing an application under section 483 BNSS (old Section 439 Cr.P.C.) On a plain reading of the provisions contained in old section 439 Cr.P.C. and the corresponding new provisions under section 483 BNSS, this Court is of the considered view that the jurisdiction conferred on both the courts are concurrent and that section does not create any embargo in entertaining the application by either of the court. However, as a matter of sound judicial practice, which is established over the years, the bail application by the accused is used to be taken up first by the Sessions Judge and upon rejection, the accused used to approach this Court for regular bail under the aforesaid section.

11. Taking into consideration the seriousness and gravity of



the allegation and the allegation made by the learned senior counsel appearing for the Petitioner that the custodial detention of the Petitioner infringes upon the fundamental right of the Petitioner as guaranteed under Article 21 of the Constitution of India and on a careful examination of the record, it appears that the allegations are very serious in nature. On a careful reading of the decision of the Hon'ble Supreme Court in the case of **Satender Kumar Antil v. Central Bureau of Investigation & anr.** reported in **2022 LiveLaw (SC) 577** this Court observes that individual liberty of the citizens is of paramount consideration and the same is to be protected while enforcing the Rule of law in the society. The allegation made by the accused-Petitioner in the present case is an anathema to the very concept of a democratic and orderly society. Therefore by taking a departure from the well established practice of considering the bail application only after the same is rejected by the District & Sessions Judge, this Court deems it proper to take up the bail application of the Petitioner on its own merit.

12. Learned Additional Government Advocate on the other hand referring to the allegation made in the F.I.R. contended that there are allegations against the present Petitioner and a case is well made out under the alleged sections. He further submitted that with regard to the allegation of police atrocities, higher authorities in the Police department have taken cognizance of the allegation made on behalf of the present Petitioner. Accordingly, on the direction of the learned Commissioner of Police of Twin City, the I.I.C. of the Police Station and some of the Officers have been transferred initially



and thereafter placed under suspension awaiting initiation of appropriate proceeding against them. Learned Additional Government Advocate and on an earlier occasion, Mr.Pitambar Acharya, learned Advocate General assured this Court that allegation with regard to the Police atrocities shall be looked into and investigated in a very fair and impartial manner. To support their contention they also submitted that the investigation of the case on the allegation of the present Petitioner has already been transferred to the Crime Branch and the I.O. has also been appointed to investigate into the allegation made against the Police Officer who were in duty at Bharatpur Police Station at the relevant point of time.

13. Taking into consideration the assurance given by the learned Advocate General as well as Additional Government Advocate, this Court is of the view that the allegation with regard to Police atrocities shall be dealt with utmost seriousness and the same shall be taken to its logical conclusion.

14. So far the present Petitioner is concerned, this Court taking into consideration the materials on record as well as the seriousness and gravity of the allegation, deems it proper to release her on bail subject to the Petitioner furnishing bail bond of Rs.30,000/- (Rupees Thirty thousand) with two local solvent sureties each for the like amount to the satisfaction of the Court in seisin over the matter. Release of the Petitioner shall be subject to such terms and conditions as would be deemed just and proper by the court in seisin over the matter.

15. Before parting, this Court would like to observe that the learned magistrate has used rejection slip under Annexure-2



to the bail application as a rejection order dated 16.09.2024. On careful examination of the rejection slip, it appears that the learned magistrate has failed to apply his/her judicial mind and has acted in a mechanical manner. This Court further observes that use of such type of format order should be avoided in view of the judgment of the Hon'ble Supreme Court in the case of **Y- v.-State of Rajasthan & another** (Crl.Appeal No.649 of 2022) wherein the Hon'ble Supreme Court has categorically stated that reasons either for grant or rejection of bail has to be specifically mentioned in the order. In absence of any reason the order would become a void order. Learned District & Sessions Judge, Khurda at Bhubaneswar is requested to communicate the same to all the magistrates not to follow such type of printed format order while considering the bail application of the accused persons.

16. This Court further observes that the arresting officer has failed to follow the procedure laid down in section 35 of BNSS (corresponding to 41/41-A Cr.P.C.) which is contrary to the guidelines framed by the Hon'ble Supreme Court in **Satender Kumar Antil v. Central Bureau of Investigation & anr** (supra). The higher authorities of the state as well as Police administration shall take action as suggested in the above noted judgment of the Hon'ble Supreme Court of India.

17. It is needless to mention here that the State Government shall bear all the expenses to be incurred in the treatment of the Petitioner.

18 Further, it is directed that the learned court in seisin over the matter shall act upon with a copy of the order down loaded from the website of High Court of Orissa duly authenticated by



the associates of the conducting counsel.

19. The BLAPL is, accordingly, disposed of.

Issue urgent certified copy of this order in course of the day.

(A.K. Mohapatra)
Judge

RKS