

HIGH COURT OF ORISSA

BLAPL NO.11313 of 2020

Kavuru Harikrishna Petitioner

Versus

State of Odisha Opposite party

06 15.07.2020

In view of extra-ordinary situation arose out of COVIT-19 Lockdown, the matter is taken up through video conferencing.

The petitioner being in custody in G.R.Case No.23 of 2019 arising out of Kashinagar P.S.Case No.119 of 2019 corresponding to G.R.Case No.25 of 2019 pending in the court of learned Addl. Sessions Judge-cum-Special Judge, Parlakhemundi, Gajapati has filed this petition for his release on bail. The case was registered for the offence under Section 363, I.P.C. but subsequently turned to Section 376(2)(n)(3), I.P.C., read with Section 6 of the POCSO Act.

This Court intended to issue notice to the informant/victim/complainant but learned counsel for the petitioner submitted that the notice to the complainant/ informant/victim was not required in the instant case.

Since the hearing of this case relates to grant of regular bail to the accused in a rape case of a minor, the presence of the informant/victim/complainant is obligatory and it is a fundamental requirement of law that cannot be bypassed, ignored or neglected in view of the

Criminal Law (Amendment) Act, 2018 which has been reiterated in the judgment rendered by Hon'ble High Court of Delhi in CRL.M.C. 1474/2020 & CRL.M.As 6330/2020, 6705/2020 on 5th June, 2020. The relevant portion of the said judgment may be extracted below:

xxx xxx xxx

“2. As per the Criminal Law (Amendment) Act, 2018, Section 439 of the Cr.P.C. which is amended with effect from 21st April, 2020 by which it was made mandatory for the informant or any other person authorized by the informant to be present at the time of hearing of an application for bail filed by the accused under these provisions. The said amendment reads as under:

“23. In Section 439 of the Code of Criminal Procedure(a) In sub-section (1), after the first proviso, the following proviso shall be inserted, namely:-

“ Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-section(3) of section 376 or section 376-AB or Section 376-DA or section 376-DB of the Indian Penal Code (45 of 1860), give notice of the application for bail to the Public prosecutor within a period of fifteen days from the date of receipt of the notice of such application.”

(b) After sub-section(1), the following sub-section shall be inserted, namely:-

“(1-A) The presence of the informant or any person authorized by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376-AB or section 376-DA or section 376-DB of the Indian Penal Code (45 of 1860).”

In view of the said amendment non-issuance of the notice to the complainants/informants/victims in cases under aforementioned Sections of the Indian Penal Code is not merely a procedural lapse, but it is clearly contrary to the unequivocal legislative mandate.

In view of the above observations, it is directed to the Registry, High Court of Orissa, through Registrar (Judicial) to issue a PRACTICE DIRECTION or NOTIFICATION to all Courts subordinate to it so as to ensure that service to the complainant/informant/victim can be effected before the hearing of bail application in the aforementioned category of cases as per mandate of law.

Apropos above observation, the complainant /informant/victim in the present case is required to be issued notice and accordingly notice is issued.

On oral submission of Mr.Satyabrata Pradhan learned counsel for the petitioner requested to amend the cause title. The said request is accepted and it is directed that learned counsel shall take steps to effect service to the complainant/informant/victim in the instant petition. He is to serve a copy of the same to the learned counsel for the State to ensure effecting the service properly on the complainant/informant/victim or any other person authorized by the informant to be present at the time of hearing the instant bail petition filed by the accused.

List this matter two weeks after.

As Lock-down period is continuing for COVID-19, learned counsel for the petitioner may utilize the soft copy of this order available in the High Court's website or print out thereof at par with certified copies in the manner prescribed, vide Court's Notice No.4587 dated 25.3.2020.

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S. K. Panigrahi, J.