

**AFR**

**IN THE HIGH COURT OF ORISSA AT CUTTACK**  
**CRLMA No. 148 of 2023**

“X”

.....

***Petitioner***

*Mr. Kalpataru Khuntia, Adv.*

Vs.

***1) State of Orissa***

.....

***Opp. Party***

***2) Chaitanya Murmu***

*Mr. S. S. Pradhan, A.G.A.*

*(for O.P. No.1)*

*Mr. Rashmikanta Mahalik, Adv.*

*(for O.P. No.2)*

**CORAM:**

**JUSTICE SAVITRI RATHO**

**ORDER**

**31.01.2024**

**Order No.**

07.

(Through hybrid mode)

1. On perusal of the previous order it appears that typographical error has crept into order dated 02.11.2023, where it has been mentioned that Mr. P.K. Mishra, learned counsel appearing on behalf of Mr. K. Khuntia, learned counsel for the O.P. No.2., as because Mr. K. Khuntia, learned counsel appears for the petitioner and not for the Opp. Party No.2. Opp. Party No.2 is represented by Mr. Rashmikanta Mahalik. The error in the order is corrected.

2. This application under Section 439(2) of the Cr.P.C. has been filed with the prayer to cancel the bail granted by the learned 1<sup>st</sup> Additional Sessions Judge, Baripada to the Opp. Part No. 2 on

23.05.2022.

3. The petitioner is the informant in Betnoti P.S. case No. 29 of 2022 registered against the Opp. Party No.2 for commission of the offences punishable under section 365,366,376(2)(n),417 of the IPC. The allegation against the Opp. Party No.2 was that there was physical relationship between the petitioner and Opp. Party No.2 as he had promised to marry the victim. When he did not marry her, she lodged the FIR. After investigation charge sheet has been filed against him for commission of offences punishable under Section 366,376(2)(n),479 of the IPC. Her name is not being revealed to protect her privacy.

4. The petitioner was arrested on 31.01.2022 and had filed an application for bail which was heard on 23.05.2022 by the learned 1<sup>st</sup> Additional Sessions Judge, Baripada. The learned counsel for the Opp. Party No.2 had submitted that the accused was ready and willing to marry the victim-informant (present petitioner), who was present in the Court. The petitioner had also filed an affidavit stating that she was ready to marry the accused and had no objection if he was released on bail. The learned counsel for the accused had filed a memo stating that after release of the accused on bail, he will marry the victim and produce the marriage

certificate within 45 days after he is released on bail.

5. On 23.05.2022, the learned First Additional Sessions Judge allowed the prayer for bail. The operative position of the order is extracted below;

*“Having heard the parties, I am to find that the victim-informant is a 28 years old girl. The F.I.R. reveals that the sexual intercourse between the accused-petitioner and the victim-informant took place by their mutual consent no doubt as because the accused-petitioner had promised to marry the victim-informant. As the accused-petitioner did not marry, the victim-informant, she has lodged the F.I.R. Now it is found that both the accused-petitioner and the victim-informant are inclined to marry each other immediately after the release of the accused-petitioner on bail. The accused-petitioner has filed a memo that he will produce the marriage certificate within 45 days of his release on bail. Considering the facts and circumstances of this case, I am inclined to release the accused-petitioner on bail on following terms and conditions.*

*Let the accused-petitioner be released on bail on furnishing bail bond to the tune of Rs.50,000/- (Rupees fifty thousand) only with one local solvent surety to the satisfaction*

*of this court with further conditions that;*

*(a) he shall attend the court on each date of posting during trial.*

*(b) he shall not commit or indulge in any criminal activities while on bail.*

*(c) he shall not abuse, assault, threaten or terrorize the victim-informant or any of her family members or any other prosecution witnesses.*

*The accused-petitioner and the victim-informant are to file the marriage certificate within 45 days of release of the accused-petitioner on bail.*

*Put up when the bail bonds are filed.”*

6. On 24.05.2022, the Opp. Party No.2 was released on bail. After his release, as he did not take any step to marry the petitioner, she filed a petition on 11.08.2022 in the learned Court below for cancelling the bail granted to him as he had not complied with the direction in order dated 23.05.2022 and did not marry the petitioner.

7. On 10.11.2022 the learned Court below after hearing the counsel for the parties, rejected the petition for cancellation of bail

on the ground that although a memo had been filed by the accused to produce marriage certificate, but no order had been passed by the Court to produce the marriage certificate as a pre-condition to release the accused on bail, for which the accused had not violated the conditions imposed by the Court at the time of disposal of the bail order.

8. Mr. K. Khuntia, learned Counsel for the petitioner, who has been engaged by Orissa High Court, Legal Aid Service Committee, submits that from a perusal of order dated 23.05.2022, it is apparent that the Opp. Party No.2 has played fraud on the Court by giving it the impression that he was prepared to marry the petitioner. Believing him, the learned Court below had noted his submission and had directed that the marriage certificate would be produced within 45 days of his release on bail. He relies on the decision of this Court in the case of *Sanjida Bibi and Ors. Vs. State of Orissa and Ors. Reported in 2019 (I), OLR 1100* in support of his submission that the Opp. Party No.2 has played fraud with the Court.

9. Mr. R. Mallick, learned Counsel appearing on behalf of the Opp. Party No. 2 submits that since there was no condition in the bail order dated 23.05.2022, that the marriage certificate had to be

filed, there is no illegality in the order dated 10.11.2022, and the learned Court below rightly refused to cancel the bail granted to the Opp. Party No. 2 on 23.05.2022. He also submits that almost 2 years have elapsed in the meanwhile and since there is no allegation that the Opp. Party No.2 has misused the liberty granted to him and as he has not violated any of the bail conditions, the bail granted to him should not be canceled.

10. Mr. S. S. Pradhan, learned Additional Government Advocate supports the submission of the learned counsel for the petitioner stating that from a perusal of order dated 23.05.2022, it would be crystal clear that the Opp. Party No.2 had persuaded the Court to grant him bail after submitting that he was prepared to marry the petitioner and a memo to that effect had also been filed. Believing the submission and accepting the contents of the memo, the learned Court below had directed for release of the accused on bail and had also directed both the parties to file the marriage certificate within 45 days from the date of release of the accused. The Opp. Party No.2 having not complied with the said condition, the bail granted to him by order dated 23.05.2023 should be cancelled.

11. This Court in *Sanjida Bibi*(supra) has held as follows;

*“Law is well settled as held in the case of **Moti Lal Songara -Vrs.- Prem Prakash @ Pappu and another reported in (2013) 55 Orissa Criminal Reports (SC) 881** that anyone who takes recourse to method of suppression in a Court of law, is, in actuality, playing fraud with the Court, and the maxim *suppresio veri, expression falsi* i.e. suppression of the truth is equivalent to the expression of falsehood, gets attracted. It has been further held that as the order has been obtained by practicing fraud and suppressing material fact before a Court of law to gain advantage, the said order cannot be allowed to stand. In case of **K.D. Sharma - Vrs.- Steel Authority of India Limited and Ors. reported in (2008) 12 Supreme Court Cases 481**, it is held that the party who invokes the extraordinary jurisdiction of the Supreme Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all the material facts without any reservation, even if those are against him. Suppression or concealment of material facts is not an advocacy. In case of **A. V. Papayya Sastry and others -Vrs- Government of A.P. and others reported in (2007) 4 Supreme Court Cases 221**, it is held that judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non-est in the eye of*

*the law. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceeding.*

*It is apparent from the order dated 24.05.2017 passed in BLAPL No.3687 of 2017 that not only the period of detention of the petitioner has been stated wrongly but also there was suppression of rejection of earlier bail order in BLAPL No. 1568 of 2017. Therefore, the bail order has been obtained by playing fraud on the Court, by suppression of material fact and by misrepresentation of fact. Even though very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail already granted as held by the Hon'ble Supreme Court in the case of **Daulat Ram-Vrs.- State of Haryana reported in (1995)1 Supreme Court Cases 349**, but in view of the fraud committed and misrepresentation of fact, I am inclined to accept the prayer made by the petitioners in this application. Accordingly, the bail order passed in favour of the opp. party no.2 Sk. Moji @ Miajan in BLAPL No. 3687 of 2017 as per the order dated 24.05.2017 stands cancelled.”*

12. Considering the submissions of the learned counsel for the petitioner and after perusing the order dated 23.05.2022, I am satisfied with the submission made on behalf of Opp. Party No.2 that he is prepared to marry the petitioner has weighed in the mind



of the learned Court below and persuaded by such submission the learned Court below has granted bail to the Opp. Party No.2 and also directed that the marriage certificate should be produced within 45 days of their marriage. So, this was a condition to be complied with within 45 days of his release. From the stand adopted by him, it is apparent that he never had any intention of marrying the petitioner but had given false impression to the Court so that his prayer for bail is allowed. Opp. Party No.2 has played fraud on the Court and violated the order dated 23.05.2022. The order dated 10.11.2022 is therefore liable to be set aside and the bail granted to the petitioner on 23.05.2022 is liable to be cancelled.

13. Hence, it is ordered.

14. The bail granted to the petitioner by order dated 23.05.2022 is hereby canceled. The order dated 10.11.2022 perused by the learned 1<sup>st</sup> Additional Sessions Judge, Baripada is set aside.

15. The Opp. Party No.2 shall surrender in the Court of learned 1<sup>st</sup> Additional Sessions Judge, Baripada by 06.03.2024 failing which NBW of arrest shall be issued for his production.

16. After his surrender, it is open to the Opp. Party No.2 to file a

fresh application for bail before the learned trial Court which shall be considered on its own merit.

17. A free copy be handed over to the learned counsel for the petitioner, who is appearing on behalf of the petitioner through the High Court Legal Aid Services Committee. A copy of this order shall also be handed over to the learned Additional Government Advocate for compliance.

18. Urgent certified copy of this order be granted on proper application.

19. Registry is directed to send a copy of this order to the learned Court below forthwith for compliance and to the District Legal Aid Service, Mayurbhanj for communication to the petitioner.

**(Savitri Ratho)**  
**Judge**

Subhalaxmi