

# Faiz Rehman vs State Of Odisha ..... Opp. Party on 21 August, 2019

**Author: S.K. Sahoo**

**Bench: S.K. Sahoo**

IN THE HIGH COURT OF ORISSA, CUTTACK

BLAPL No. 4856 of 2019

Application under section 439 of the Code of Criminal Procedure, 1973 in connection with C.T. Special (POCSO) No.79 of 2018 pending in the Court of Special Judge (POCSO ), Dhenkanal.

Faiz Rehman ..... Petitioner

-Versus-

State of Odisha ..... Opp. Party

For Petitioner: - M/s. Asok Mohanty  
(Senior Advocate)  
P.P.K. Pandit  
S.K. Jena, L. Pradhan

For Opp. Party: - Mr. Priyabrata Tripathy  
Addl. Standing Counsel

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

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Date of Argument: 20.08.2019 Date of Order: 21.08.2019  
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S.K. SAHOO, J. This is the second successive bail application of the petitioner Faiz Rehman before this Court in connection with Dhenkanal Sadar P.S. Case No.539 of 2018 corresponding to C.T. Special (POCSO) No.79 of 2018 pending in the Court of

learned Special Judge (POCSO ), Dhenkanal in which charge sheet has been submitted under sections 354-A, 341, 323, 294 and 506 of the Indian Penal Code, section 12 of the Protection of Children from Sexual Offences Act, 2012 (hereafter 'POCSO Act') and section 42 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereafter 'JJ Act').

The first bail application of the petitioner in BLAPL No.7760 of 2018 was rejected on 22.02.2019 on the ground that the petitioner is a moneyed man and an influential person and once he is released on bail; there is every possibility of tampering with the evidence particularly when the victims are from poor families. It was further observed that the crime committed in the case against the victims is not acceptable in a civilized society and it has its far-reaching effect and affects the peaceful life of the society. The manner in which a number of poor girl students taking shelter in the Centre were sexually abused, physically and mentally tortured, harassed and humiliated for years together in the hands of licentious persons and threatened to be ousted from the Centre in case of their protest or disclosure before anybody, the nature and gravity of the accusation and prima facie material on record showing the

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involvement of the petitioner in the commission of offences were taken into account while rejecting the bail application.

3. One Pratap Kumar Acharya, Chairperson, Child

Welfare Committee, Dhenkanal, Odisha lodged the first information report before the Inspector in charge, Sadar Police Station, Dhenkanal annexing the application given by some of the children of Good News India Dream Centre, Beltikiri (hereafter 'Centre') wherein it is mentioned that they have been physically tortured by the staff of the Centre and some of the girl children have been sexually abused by the petitioner Faiz Rehman who was Chairman of the Centre. There were altogether six teaching staffs who were working in the centre and the children were prosecuting their studies in different schools while staying in the Centre. The co-accused Udit Kumar Lima was the Asst. Project Director of the Centre and he along with one Rani Didi were using abusive language against the inmates and assaulting them and they were also threatening to assault the inmates by means of shoes. It is further stated that the petitioner Faiz Rehman was hugging and kissing the girls students and whenever they were raising any objection or protest, he was threatening them to oust from the Centre.

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4. The Inspector in charge of Sadar police station, Dhenkanal registered the case under sections 354-A, 341, 323, 294, 506 read with section 34 of the Indian Penal Code and section 10 of the POCSO Act and took up investigation of the case. On 02.12.2018 Mr. Subash Chandra Sahoo, D.S.P., IUCAW, Dhenkanal took up investigation of the case as per the direction of Superintendent of Police, Dhenkanal. During course

of investigation, he visited the spot and it came to light that the petitioner Faiz Rehman after his schooling in Kolkata, left for USA in 1972 for higher studies. Though he belonged to Muslim community but later on he converted to Christianity. During his stay at USA, he came in contact with some NGO and after coming back to India, he formed an organization which was working in the name of Happy and Holy Home Society in Salagadia, Nayagram in the district of West Medinapur which was registered under West Bengal Societies Registration Act, 1961. He started a hostel at Amalapada, Angul in the year 2008 which was shifted to Dhenkanal town in the year 2012. The District Child Protection Officer (DCPO) and Chairperson, CWC, Dhenkanal inspected the hostel and found some deficiencies for which closure notice was served by the District Administration. Protesting against of such closure notice, a writ application was

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filed on behalf of the petitioner Faiz Rehman before this Court in W.P.(C) No. 10230 of 2015 and this Court issued various directions, inter alia, for removal of the deficiencies in the hostel and to produce the children staying in the hostel before the Child Welfare Committee. The direction of this Court was not complied with and accordingly, the hostel was closed. Another writ petition was filed before this Court in W.P.(C) No.7443 of 2016 challenging the action of D.C.P.O., Dhenkanal and this Court directed to the District Authority that the students who were there in the hostel be re-allowed in the school from which they

had taken T.C. and accordingly, the students were brought there and readmitted in the school. A piece of land was purchased in village Beltikiri, Dhenkanal by one Simanchal Nayak who was the Project Director of the hostel since 2012. A new hostel building was constructed over the land by the organization and it started functioning in the month of October 2017 at Beltikiri.

It further came to light during investigation that the Project Director Simanchal Nayak was calling the girl students to his office room during evening hours and was misbehaving with them by hugging, kissing and molesting them and compelling them to sit on his lap and threatening them not to disclose before anybody or else they would be ousted from the hostel

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forever. The co-accused Udit Kumar Lima was also misbehaving with the girl students by abusing them in filthy language, assaulting them by kick blows and threatening them to assault by means of shoes. Whenever the petitioner Faiz Rehman was coming to the Centre, he used to hug and kiss the girl students, touching the sensitive parts of their body on the plea of love and affection. It further came to light that the petitioner Faiz Rehman had not observed any rules and regulations and illegally running the Centre since 2012 and he was receiving donation from USA under Foreign Contribution (Regulation) Act, 1976 and he was running twenty five institutes inside Odisha including the one at Beltikiri in Dhenkanal. The statements of the victim girls and some of their parents and independent witnesses were recorded

and it was found that the institution was running illegally without any authority or permission from the Collector, Dhenkanal. Finding prima facie case against the petitioner, charge sheet was submitted on 28.01.2019.

5. Mr. Asok Mohanty, learned Senior Advocate appearing for the petitioner submitted that the petitioner is in judicial custody since 02.12.2018 and after rejection of the earlier bail application by this Court, trial has already commenced and the victims have been examined in the trial

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Court and they have not supported the prosecution case and were declared hostile and some of the other victims were declined by the prosecution by filing a memo when the learned Special Public Prosecutor found them not supporting the prosecution case. It is contended that since the rest of the prosecution witnesses would not improve the prosecution case and there is no chance of tampering with the evidence or absconding of the petitioner, the bail application may be favourably considered.

Mr. Priyabrata Tripathy, learned Addl. Standing Counsel for the State on the other hand vehemently opposed the prayer for bail and supplied a chart showing the names of the vital witnesses yet to be examined by the prosecution during trial. He placed the statements of those witnesses and contended that there is no such change in the circumstances for entertaining this successive bail application. It is argued that the

petitioner is likely to influence the remaining witnesses not to support the prosecution case, in case he is released on bail.

6. Adverting to the contentions raised by the respective parties and on perusal of the case records, it appears that the petitioner Faiz Rehman was the Chairman of the Centre and the Collector & District Magistrate, Dhenkanal has not given any

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permission for running of the Centre at Beltikiri and the Centre has also not been registered under the JJ Act.

Four victims who have been examined so far as P.Ws.1, 2, 4 and 5 have not supported the prosecution case. Three other victims were declined by the prosecution on 09.04.2019 by filing a memo as the Special Public Prosecutor found them not supporting the prosecution case. It appears that there are other witnesses like Mantu Majhi, Satyananda Majhi, Santosh Majhi, Anjana Sharma, Jyoshna Lima, Padmaja Roul, Stiphenson Roul, Udit Kumar Lima, Hana Bibi, Arati Nayak and Sipanjani Pani who have stated about the illegal activities going on in the centre.

The definition of 'victim' as per section 2(wa) of Cr.P.C. means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression 'victim' includes his or her guardian or legal heir. After going through the statements of the witnesses whose names have been mentioned in the list furnished by the learned State counsel, I am not inclined to

accept the contention raised by the learned counsel for the petitioner that all the victims have been examined and that they have not supported the prosecution case. There are many charge

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sheet witnesses yet to be examined who appear to be very vital witnesses to substantiate the charge against the petitioner and therefore, the possibility of tampering with the evidence of those witnesses by the petitioner after being released on bail cannot be ruled out. Merely because some of the victims have not supported the prosecution case during trial so far cannot be a ground to grant bail to the petitioner.

The statements of most of the girl students staying in the Centre and others indicate as to how the petitioner Faiz Rehman was sexually abusing the students. They were given threat not to disclose the incident before anybody otherwise they would be ousted from the Centre. The poor helpless inmates were tortured in such manner for years together.

The settled principle of law is that successive application for grant of bail to an accused is permissible under the changed circumstances which must be substantial one and which has got a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence. Without the change in the circumstances, the subsequent bail application would be deemed to be seeking review of the earlier rejection order which is not permissible under criminal law. In

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the present case, I find no change in the circumstances to take a contrary view.

In view of the foregoing discussions, when the petitioner is an influential person and likely to tamper with the prosecution evidence and the crime committed has far-reaching effect and the manner in which poor girl students taking shelter in the Centre were sexually abused, physically and mentally tortured, harassed and humiliated for years together and threatened to be ousted from the Centre, the nature and gravity of the accusation and prima facie material on record showing the involvement of the petitioner in the commission of offences and more particularly when there is no change in the circumstances after rejection of the earlier bail application, I am not inclined to reconsider the prayer for bail of the petitioner and to direct his release on bail.

Accordingly, the bail application sans merit and hence stands rejected.

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S.K. Sahoo, J.

Orissa High Court, Cuttack The 21st August 2019/Sukanta