

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.93 of 2019**

- Raju S/o Pugdu Aged About 62 Years R/o Village Kilam, Thana Chotedongarh, District - Narayanpur Chhattisgarh., District : Narayanpur, Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through Officer In Charge, Police Station Chotedongarh, District - Narayanpur Chhattisgarh., District : Narayanpur, Chhattisgarh

---- Respondent

For Appellant : Ms. Shikha Pandey, Advocate
 For Respondent/State : Shri Subhash Yadav, G.A.

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Order on Board**Per Manindra Mohan Shrivastava, J.****06/02/2019**

This is an appeal arising out of an order dated 05-12-2018 passed by the N.I.A Court (Special Court) Jagadalpur, District Bastar, rejecting application for grant of bail filled by the appellant accused. Way back in the year 2007, a criminal case was registered against one Raju son of Vuddy Mourya along with number of other accused on the allegations that on 09-03-2007 all the accused, who are said to be the members of naxalite organization, went to the house of Asha Devi and it is alleged that Asha Devi was killed. A criminal case was registered and after filing of charge sheet, trial was held in Sessions Trial No.423/2012 (***State versus Hadi @ Sukh Singh***) by the Court of Additional Sessions Judge (FTC) Kondagaon. The trial was conducted against those, who were arrested. Raju son of Pugdu, was stated to be absconding accused and no

trial was held against him. The learned Trial Court passed the judgment on 30-11-2007 in Sessions Trial No.118/2007, acquitting as many as 13 accused. Later on, another accused Sonuram was arrested and he was also tried in Sessions Trial No.118/2007 by the same Court and thereafter, acquitted vide judgment dated 24-03-2008. Two more accused namely Brijlal and Baliram were arrested and then they were also tried in Sessions Trial No.423/2012 by the same Court and they were also acquitted vide judgment dated 08-07-2013.

2. One of the accused Raju, son of Vuddy Mourya, against whom, permanent warrant of arrest remained in force ever since 2007, the present appellant, was arrested on 19-09-2016 and produced before the Jurisdictional Magistrate. As the appellant-Raju had taken objection regarding identity that he is the son of Pugdu and not Vuddy Mourya, the statement of the arresting police officer was also recorded. However, as original records of trial were not available before this Court, the bail application of the present appellant was kept pending. In course of time, upon constitution of Special Court under N.I.A. Act, the case was transferred to the N.I.A Court at Jagdalpur. The bail application of the appellant was finally rejected on 05-12-2018 mainly on the ground that records are not available and it is not possible to decide the bail application on its own merits. It is this order, which is under challenge in this appeal.

3. Learned counsel for the appellant would argue that the appellant was arrested way back on 19-9-2016 and ever since then, the appellant has remained in jail and neither any trial is being conducted nor any material progress is taking place, because the records are not said to be traceable. It is further argued that as far as the present appellant is concerned, he is not one of the accused of the earlier criminal case in ***State versus Hadi @ Sukh Singh***, because in that case, the accused name was Raju son of Vuddy Mourya

whereas the present appellant's father name is Pugdu. Learned counsel for the appellant would argue that once the appellant was arrested, he was entitled to speedy trial, but despite lapse of almost two and half years, nothing has happened, because the records are not traceable, which is serious violation of appellant's fundamental right under Article 21 of the Constitution of India. It is argued that only on these extra-ordinary circumstances and grounds, the appellant ought to be released on bail.

4. On the other hand, learned State counsel would argue that in the present case, the records would show that the appellant remained absconding ever since 2007 and he has been arrested after about 11 years and as far as the identity part is concerned, itself is a matter of consideration during trial. He would argue that delay in trial is not occasioned, because of any inability on the part of prosecution to conduct trial, but records of the case were not transmitted to the N.I.A Court. He would further argue that since present is a case relating to murder in naxalite activity, the appellant's bail application has been rightly rejected and even on merits, the appellant is not entitled to bail.

5. We have heard learned counsel for the parties and perused the records.

6. We find that the present is a case, where the appellant has been arrested under permanent warrant of arrest issued against Raju son of Vudday Mourya and the appellant's case is that he is not the same person as his father's name is Pugdu. We are also shocked to see that even though, the present appellant was arrested way back on 19-09-2016, since then, only records are being traced. Two records have been sent to this Court, out of which, one has been sent from the office of Additional Sessions Judge, Bastar at Jagdalpur, which is record of Special Sessions Trial No.06/2019 (earlier Sessions Trial No.423/2012, 118/2007). The other records only consist of order sheets and

various memoranda sent by the N.I.A Court, received from the Special Judge, N.I.A Court Jagdalpur. Upon perusal of the two records, We find that at the time, when the appellant was arrested on 19-09-2016, an issue of identity was raised and the learned Magistrate recorded the statement of police official, who arrested him and at that time, the appellant's contention that he is not the same person, was not accepted. Thereafter, records of the case were not traceable and the case of the appellant remained pending, until it was transferred to the N.I.A Court. The original records were not traceable, therefore, those records were not transferred to the N.I.A Court at Jagdalpur. From the records sent from the N.I.A Court, Jagdalpur, we find that number of memoranda were being issued to the Magistrate at Kondagaon for forwarding the records. We also find that memos were also sent to the District & Sessions Judge, Kondagaon for sending the records, but the records were not traceable and for want of records, no progress has taken place in the trial against the present appellant and he has remained in jail for the last two and half years without any progress whatsoever.

7. In our opinion, only on the aforesaid exceptional circumstances, the appellant deserves to be granted bail. We are, therefore, inclined to direct that the appellant shall be released on bail on his furnishing personal bond of Rs.25,000/- with two local sureties of the like sum to the satisfaction of the concerned trial Court. He shall appear before the trial Court, as and when directed.

8. All the records, which have been received in the present case, one from the N.I.A Court, Jagdalpur and other from the First Additional Sessions Judge, Bastar at Jagdalpur, both be remitted forthwith to the N.I.A Court at Jagdalpur, so that the trial against the present appellant may be conducted and completed

at the earliest.

9. In the result, this appeal is allowed.

SD/-
(Manindra Mohan Shrivastava)
Judge

SD/-
(Rajani Dubey)
Judge