

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.278 of 2022

Arjun Khora

....

Petitioner

Mr. Digambar Sethi, Advocate

-versus-

State of Odisha

....

Opposite Party

Ms. S. Mishra, Additional Standing Counsel

CORAM:

JUSTICE B. P. ROUTRAY

ORDER
27.4.2022

Order No.

- 05.
1. Heard Mr. D. Sethi, learned counsel for the Petitioner and Ms. S. Mishra, learned Additional Standing Counsel.
 2. The order dated 7th December, 2021 of learned Sessions Judge-cum-Special Judge, Jeypore passed in T.R. Case No.43 of 2018 rejecting the prayer of the Petitioner for grant of default bail under Section 36-A(4) of the N.D.P.S. Act read with Section 167(2) of the Cr.P.C has been challenged.
 3. The facts of the case are that the Petitioner is in custody in connection with T.R. Case No.43 of 2018 arising out of Jeypore Town Police Station Case No.208 dated 26th July, 2018 for commission of offences under Sections 20(b)(ii)(C)/25//29 of the N.D.P.S. Act. As per the allegations, the Petitioner along with five other accused persons were found in possession of contraband ganja weighing 589 kg. 500 gms while transporting

the same in a Mini Truck. By order dated 27th July, 2018 of the learned Sessions Judge-cum-Special Judge, Koraput, Jeypore, he has been taken to custody on remand on production by the police. The investigation continued and 180 days completed on 23rd January, 2019. Before the said date, on 21st January, 2019 a petition was filed by the I.O. praying for extension of time for completion of investigation and the learned Sessions Judge-cum-Special Judge on the same day allowed the prayer of the I.O.

4. It is submitted that though three other co-accused persons were arrested and remanded to custody along with the present Petitioner have been released on default bail, but the prayer of the present Petitioner was rejected by the learned Special Judge on the ground that he remained absconded without surrendering in time upon his release on interim bail subsequently.

5. Upon hearing Ms. Mishra, learned ASC and upon perusal of record it reveals that 180 days of investigation completed on 23rd January, 2019 and admittedly this Petitioner was inside custody on 23rd January, 2019. Further the extension of time for completion of investigation was granted by order dated 21st January, 2019 and on that date the Petitioner was also inside custody. It remains undisputed that while granting extension of the period for completion of investigation, this Petitioner along with other co-accused persons were not granted any opportunity of hearing and upon completion of 180 days of investigation they were not informed of their right for default bail. As such the Petitioner is found standing on the same footing with that of other co-accused persons who have been given the benefit of default

bail on the date when the right accrued in their favour. So the subsequent abscondence of the Petitioner with effect from 5th September, 2019 after his release on interim bail will not stand on his way for getting the same benefit extended in favour of the other similarly situated co-accused persons.

6. In the result the CRLMC is allowed. The order dated 7th December, 2021 of learned Sessions Judge-cum-Spl. Judge, Jeypore in T.R. Case No.43 of 2018 in respect of the present petitioner is set aside. Learned Special Judge is directed to release the Petitioner on bail in the aforesaid case on furnishing bail bond of Rs.50,000/- (fifty thousand) with two sureties each for the like amount to his satisfaction with further condition that one of such surety shall be his relative and that the Petitioner shall not be involved in any other offence while on bail and shall co-operate for expeditious conclusion of trial. Further, the court below is at liberty to fix any other condition in addition to the above as it deems fit and proper. It is further made clear that violation of any such condition shall entail cancellation of bail.

7. The petition is accordingly allowed.

8. An urgent certified copy of this order be issued as per Rules.

(B.P. Routray)
Judge