

IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLMC No.781 of 2022

***Kasar Nayak @ Kaisar Kumar Naik
and Another***

.... ***Petitioners***

Mr. Mahes Das, Advocate

-versus-

State of Odisha

.... ***Opp. Party***

Mr. K.K. Das, Additional Standing Counsel

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
20th June, 2022

Order No.

04. 1. Present petition filed under Section 482 Cr.P.C. is directed against the order dated 21st August, 2012 of the learned S.D.J.M., Bhanjanagar passed in 2(a) C.C. No.48 of 2011.
2. The Petitioners are accused for commission of offences under Sections 272/273 of I.P.C. and Section 47(a)/52-A(b) of Bihar and Orissa Excise Act. Initially the Petitioners were arrested and forwarded to custody alleging commission of offence under Section 47(a) only. Subsequently, at the time of submission of final P.R. rest of the offences, as aforesaid, were added and accordingly cognizance was taken by the impugned order dated 21st August, 2012 and the order of NBW of arrest was issued.
3. It is submitted on behalf of the Petitioners that since they were earlier released on bail in the same case, subsequent addition of other graver offences will not disentitle them from the benefit of bail

availed by them and as such the order of issuance of NBW is bad in the eye of law.

4. The facts of the case reveal that both the Petitioners along with two other accused persons were initially arrested and produced before the learned Magistrate on 30th September, 2011 for alleged commission of offence under Section 47(a) of Bihar and Orissa Excise Act and subsequently all the accused persons were released on bail on 19th January, 2012 as per order of this Court passed in BLAPL No.22351 of 2011. Thereafter the final PR was submitted on 21st August, 2012 adding such other offences and consequently cognizance was taken for those higher / graver offences discussed above, and the order of NBW was issued.

5. In respect of other two accused persons besides the present Petitioners, they in the meantime have surrendered and released on bail and the case has been split up against the present Petitioners by order dated 2nd July, 2019 of the learned Magistrate.

6. It is true that there is inordinate delay in the approach of the Petitioners to challenge the impugned order which is dated 21st August, 2012. The Petitioners have not explained any satisfactory ground for approaching this Court almost after ten years. However, keeping aside the same, an important question of law is found involved herein that, in such cases where the accused has been released on bail earlier and subsequently higher / graver offences are added at the time of submission of charge-sheet whether the accused should be allowed to continue on the bail earlier granted to him, or what course would be open for the courts in such eventualities.

7. The Hon'ble Supreme Court in the case of ***Pradeep Ram v. State of Jharkhand and Another, (2019) 17 SCC 326*** have answered on this point. In the said decision one of the issues was, whether in a case where an accused has been bailed out in a criminal case, in which case, subsequently new offences are added, is it necessary that bail earlier granted should be cancelled for taking the accused in custody? The Hon'ble Supreme Court answered as follows:-

“XXXXXX XXXXXXXXXXXX

31. In view of the foregoing discussions, we arrive at the following conclusions in respect of a circumstance where after grant of bail to an accused, further cognizable and non-bailable offences are added:

31.1. The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the accused can certainly be arrested.

31.2. The investigating agency can seek order from the court under Section 437(5) or 439(2) Cr.P.C. for arrest of the accused and his custody.

31.3. The court, in exercise of power under Section 437(5) or 439(2) Cr.P.C., can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The court in exercise of power under Section 437(5) as well as Section 439(2) can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-bailable offences which may not be necessary always with order of cancelling of earlier bail.

31.4. In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it needs to obtain an order to

arrest the accused from the court which had granted the bail.

XXXXXX XXXXXX XXXXX”

8. Coming back to the instant case, here the Petitioners were earlier released on bail under the provisions of Section 439 Cr.P.C. and the NBW of arrest was issued on the prayer of the investigating officer upon submission of the final PR adding other higher / graver offences. As stated earlier, since the Petitioners have approached this Court with inordinate delay, which remains unexplained, though this Court is not interested to entertain the petition, but in the circumstances, as an important question of law is involved, this Court is inclined to pass certain directions in the interest of justice for early completion of trial.

9. Keeping in view the law settled by the Supreme Court as discussed above, it is observed that in the event the Petitioners surrender before the learned S.D.J.M., Bhanjanagar in connection with 2(a) C.C. No.48(A) of 2011 corresponding to P.R. No.40 of 2011-2012 of the Excise P.S., Bhanjanagar on or before 30th July, 2022 and apply for bail in respect of those newly added offences, their prayer for bail shall be considered in accordance with law.

10. The CRLMC is accordingly disposed of.

(B.P. Routray)
Judge