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IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 3020 of 2022

Bitu Khan

...

Petitioner

Mr. A.S. Paul, Advocate

- Versus -

State of Odisha

...

Opposite Party

Mr. P.K. Maharaj,
Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER

04.05.2022

Order No.

2.

1. This matter is taken up through hybrid mode.
2. Heard Mr. A.S. Paul, learned counsel for the petitioner and Mr. P.K. Maharaj, learned Addl. Standing Counsel for the State.
3. The petitioner is in custody since 18.06.2021 in connection with Badagad P.R. Case No. 217 of 2021 corresponding to T.R. Case No. 269 of 2021 pending in the Court of learned Special Judge-cum-1st Additional Sessions Judge, Bhubaneswar for the alleged commission of offence under Sections 21(c)/22(c) of NDPS Act.
4. The prosecution allegation is that the petitioner was apprehended by the staff of Badagad Police Station, Bhubaneswar while he was in possession of brown sugar

weighing 575 grams. The said contraband was seized from his conscious and exclusive possession. While the petitioner was in custody, a petition was filed on behalf the I.O. for extension of the period of investigation, which was allowed by learned Special Judge, Bhubaneswar by granting 20 days time. On expiry of the said period of 20 days, charge sheet was submitted. In the meantime, the petitioner filed an application seeking his release on default bail as per Section 167 (2) of Cr.P.C. on the ground that neither the petition to extend the period of investigation was served upon him nor he was heard and in any case, the said petition was allowed after expiry of the stipulated period of investigation without having the petitioner produced before the Court. The said petition came to be rejected by learned Special Judge by order dated 17.03.2022 whereupon the petitioner has approached this Court seeking bail on the above ground.

5. Mr. A.S. Paul, learned counsel for the petitioner has submitted that the petitioner being remanded to judicial custody for the first time on 18.06.2021, the stipulated period for completion of investigation, i.e., 180 days, expired on 14.12.2022. Referring to a copy of the order sheet of the case enclosed to the bail application, Mr. Paul, further submits that the petitioner was neither produced before the Court nor his right to be released on default bail was informed to him.

Mr. Paul has submitted a calculation sheet through a memo showing the exact number of days elapsed in between the date of remand and the date of expiry of 180 day-period. On such basis, it is argued that learned court below committed

gross illegality in not releasing the petitioner on default bail.

6. Mr. P.K. Maharaj, learned Additional Standing Counsel, on the other hand, has argued that the petition for extension of time to complete investigation was filed by the Special PP on 09.12.2021 whereupon the case was posted to 14.12.2021 for service of copy of the petition on the other side and hearing. On 14.12.2021, the defence counsel neither took any steps nor appeared in the Court. Therefore, according to Mr. Maharaj, learned Court below committed no illegality whatsoever in rejecting the petition on merits.

7. It is undisputed that the petitioner was remanded to judicial custody for the first time on 18.06.2021. Law is well settled that the date of remand has to be excluded while calculating 180 days. Reference in this regard may be had to the decision of the Apex Court in the case of ***M. Ravindran vs. The Intelligence Officer, Directorate of Revenue Intelligence***, reported in 2020 SCC Online SC 867. Such being the case, the period of 180 days is to be calculated as under :-

19.06.2021 to 30.06.2021	12 days
01.07.2021 to 31.07.2021	31 days
01.08.2021 to 31.08.2021	31 days
01.09.2021 to 30.09.2021	30 days
01.10.2021 to 31.10.2021	31 days
01.11.2021 to 30.11.2021	30 days
01.12.2021 to 15.12.2021	15 days
	180 days

From the above table, it is manifest that 180 days expired on 15.12.2021 and not on 14.12.2021 as calculated by learned counsel for the petitioner. Learned Court below also seems to have committed an error in calculating the 180 day-period, which in turn appears to be caused because of inclusion of 1st date of remand, which, as stated earlier, ought to be excluded.

8. The factual scenario being as described above, it is seen that the prayer for extension of time for completion of investigation was made on 09.12.2021 and was allowed on 14.12.2021. However, on 14.12.2021, the petition was allowed without hearing the petitioner as no steps were taken by the defence counsel nor he appeared on call. In the case of ***Lambodar Bag vs. State of Odisha***, reported in 2018 (OCR) 31, this Court relying upon the decision of the Apex Court in the case of ***Hitendra Vishnu Thakur -Vrs.- State of Maharashtra*** reported in A.I.R. 1994 Supreme Court 2623 has held that if an application for extension of time to complete investigation is filed on behalf of the investigating agency, a copy of the same has to be duly served upon the accused so as to give him an opportunity to have his say in the matter. In the instant case, the defence counsel was not present, but then learned Court below does not appear to have taken any steps to have the accused produced before the Court either physically or virtually. Interestingly, the accused was produced through virtual mode on the next date, i.e., 15.12.2021 but by such time, the prayer for extension had already been allowed. Thus, the accused remained in dark all through as the petition for

extension was allowed behind his back.

9. It need not be over emphasized that in matters affecting personal liberty the Court must be fully conscious and sensitive to the fundamental right to liberty of the accused. From a perusal of the order sheet of the case, this Court is constrained to observe that learned Court below was perhaps not alive or conscious of its Constitutional duty in safeguarding the fundamental right of the accused. If the petition was filed on 09.12.2021, the same should have been considered immediately or on 10.12.2021, which was a Friday or at least on 13.12.2021, which was a Monday if not on the two holidays of Saturday and Sunday falling in between. However, learned Court below kept the petition pending and took it up only on 14.12.2021, which according to it, was the last date of expiry of the 180 day-period. In the case of **Rakesh Kumar Paul vs. State of Assam**, reported in 2017 (68) OCR (SC) 1, the Apex Court has categorically held that in matters of personal liberty no subterfuge should be adopted or allowed to be adopted to frustrate the right of the accused. The following observations of the Hon'ble Court in this regard are noteworthy.

*“This Court also noted that apart from the possibility of the prosecution frustrating the infeasible right, there are occasions when even the court frustrates the infeasible right. Reference was made to **Mohamed Iqbal Madar Sheikh v. State of Maharashtra** wherein it was observed that some courts keep the application for ‘default bail’ pending for some days so that in the meantime a charge sheet is submitted. While such a practice both on the part of prosecution as well as some courts must be very strongly and vehemently discouraged, we reiterate that no subterfuge should be resorted to, to defeat the*

indefeasible right of the accused for 'default bail' during the interregnum when the statutory period for filing the charge sheet or challan expires and the submission of the charge sheet or challan in court." (Emphasis supplied)

Though the above observations relate to the petition for default bail yet the spirit thereof would certainly apply to a petition for extension of time to complete investigation as both affect the personal liberty of the accused. This Court therefore, disapproves the casual manner in which the entire matter was dealt with by learned Court below.

10. From the facts narrated above, this Court finds that learned court below has given a complete go by to the Constitutional and statutory requirements and has dealt with the matter lightly and casually. In the process, the valuable right of the accused of being heard at the time of extension of the period of investigation was frustrated. Therefore, notwithstanding the fact that 180 day-period expired on 15.12.2021 but as the said period was extended by 20 days vide order dated 14.12.2021 passed behind the back of the petitioner, it must be held that the indefeasible right of the petitioner was frustrated and therefore, he is entitled to be released on default bail.

11. It is therefore directed that the petitioner be released on bail on such terms and conditions as the learned Court below deems fit and proper to impose including the condition that the petitioner shall personally appear before the Court on each date of posting of the case and in case of even a single default, necessary order shall be passed to take him into custody again.

12. The BLAPL is accordingly disposed of.
13. Urgent certified copy of this order be granted on proper application.

(Sashikanta Mishra)
Judge

B.C. Tudu

