

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 3829 of 2022

Loknath Behera @ Lucky Petitioner

Mr.Suryakanta Dwibedi,
Advocate

-versus-

State of Odisha Opp. Party

Mrs. Susamarani Sahoo,
Addl. Standing Counsel

CORAM:

JUSTICE S.K. SAHOO

Order No.

ORDER

02.09.2022

02. This matter is taken up through Hybrid arrangement (video conferencing/physical mode).

Heard learned counsel for the petitioner and learned counsel for the State.

This is an application for bail under section 439 of Cr.P.C. in connection with Special Case No.107 of 2020 arising out of Bhubaneswar P.S. Case No.16 of 2020 pending in the Court of learned 3rd Addl. Sessions Judge -cum- Special Judge, Balasore for offences punishable under sections 21(C)/29 of the N.D.P.S. Act.

2. Learned counsel for the petitioner submitted that the petitioner is in judicial custody since

19.03.2020 and his earlier bail application in BLAPL No. 3748 of 2020 was rejected as per order dated 19.01.2021 and direction was given to the learned trial Court to expedite the trial but there is no such progress in the trial and therefore, the petitioner may be given interim bail for some period.

3. Status report was called for as per order dated 15.07.2022 to verify the progress of the trial and the learned trial Court has furnished the same vide letter dated 26.07.2022, from which it appears that out of nineteen charge sheet witnesses, only six witnesses have been examined so far. It is mentioned that repeated summons have been issued to the witnesses, who are mainly the official witnesses, but on each date, the SP, CID, CB, Odisha, Bhubaneswar is seeking adjournment on the ground that the witnesses are out of station for investigation and collection of intelligence. The prosecution is also not inclined for examination of such witnesses through Video Conferencing on the ground that in such event, the prosecution will not get opportunity to refresh the memory of such witnesses beforehand and it would be prejudicial for the prosecution and prosecution is insisting examination of all such witnesses.

It is unfortunate that when Orissa High Court Video Conferencing for Courts Rules, 2020 is in force and infrastructure has been provided for recording of

the statements of the witnesses through virtual mode and specific instruction has been given by this Court to record the statements of official witnesses by adopting such method, the Public Prosecutor is expressing his reluctance to use such process. The witnesses are official witnesses and the copies of the relevant case records/documents can be supplied to them in advance by the prosecuting agency for getting prepared and to adduce their evidence on the date fixed. Moreover, it has become a routine practice of the prosecuting agency to insist in examining all the witnesses including official witnesses named in the charge sheet even though it is just a matter of repetition of evidence and thereby killing the valuable time of the Court and in that process, the cases are lingering in the trial Courts. It is the quality and not the quantity of evidence which is important as has been provided by section 134 of the Evidence Act. There is no requirement under law of evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted.

The learned trial Court shall do well to obtain a list of witnesses from the Public Prosecutor whom he intends to examine and the evidence of all the official witnesses shall be recorded through virtual mode

unless there is absolute necessity for physical appearance and it is duty of the Public Prosecutor to give prior intimation to those witnesses who shall remain present on the remote point on the date fixed to give their evidence and no adjournment shall be granted and the trial should proceed keeping in view the provision under section 309 of Cr.P.C. All endeavour shall be made by the learned trial Court to conclude the trial by the end of December 2022.

4. Considering the submissions made by the learned counsel for the respective parties, the period of detention of the petitioner in judicial custody and since the case is lingering mainly on account of laches of prosecuting agency, I am inclined to release the petitioner on interim bail for a period of three months from the date of release and the petitioner shall surrender before the learned trial Court immediately on expiry of the three months period.

5. For the above period, let the petitioner be released on interim bail in the aforesaid case on furnishing bail bond of Rs.50,000/-(rupees fifty thousand) with two local solvent sureties each for the like amount to the satisfaction of the learned Court in seisin over the matter with further terms and conditions that while on interim bail, the petitioner shall not try to come in contact with any of the prosecution witnesses or tamper with the evidence,

he shall not indulge in any criminal activities and he shall appear before the learned trial Court on each date on which the date would be fixed for trial during the period of interim bail.

Violation of any terms and conditions shall entail cancellation of interim bail.

Accordingly, the BLAPL is disposed of.

Urgent certified copy of this order be granted on proper application.

A free copy of the order be handed over to the learned counsel for the State which will be communicated to the Superintendent of police CID, CB, Odisha, Bhubaneswar for compliance.

A copy of this order particularly observation made in paragraph-3 may be circulated among all the District Judges across the State with the approval of the Hon'ble Chief Justice who shall in turn provide a copy of the same to all the Judicial Officers posted in their respective judgship.

(S.K. Sahoo)
Judge