

IN THE HIGH COURT OF ORISSA AT CUTTACK
BLAPL No.3854 of 2022

Sindhu Gamango *Petitioner*
Mr. Rabi Narayan Mohanty, Adv.
-versus-
State of Odisha *Opposite Party*
Mr. S.N. Das, ASC

CORAM:
DR. JUSTICE S.K. PANIGRAHI

Order
No.

ORDER
28.10.2022

01. 1. This matter is taken up through hybrid arrangement.
2. Heard learned counsel for the Petitioner and learned counsel for the State.
3. The petitioner being in custody in connection with Badagada P.S. Case No.196 of 2019 corresponding to Special G.R. Case No.13 of 2019 pending in the Court of the learned Additional Sessions Judge-cum- Special Judge, Bhanjanagar registered for the alleged commission of offences under Sections-20(b)(ii)C of the NDPS Act, has filed this application under Section 439 of Cr.P.C. for his release on bail.
4. Bereft of unnecessary details, the gist of the prosecution case is that the informant-Pratap Chandra Tripathy, IIC, Badagada PS lodged a written complaint alleging therein that while he along with his other staff

were performing blocking duty on 12.09.2019 at about 9:30 AM at Badagada- Seragada road at Manikyapur Chowk at about 10:30 AM found that one metal colour Hyundai Xcent car bearing Regd.No.-OD-07-Y-4100 coming from Badagada side. The alleged car stopped on getting the signal of the informant and found that only driver was boarding in the said vehicle. While interrogating the present Petitioner, three other vehicles came there and police stopped their vehicle. When the boarders of the vehicles saw police, they fled from the spot. Police caught hold of three other accused persons from three other vehicles i.e. One Max Pickup Van bearing Regd.No.OD-07-N-0849, one Tata-407 bearing Regd. No.OD-07-T-0125 and one Bolero bearing Regd. No.OD-20-Y-5834. One Majesh Gomango is the boarder of Tata-407 Vehicle, Manual Mandal is the boarder of Max-Pickup Vehicle, and Sindhu Gomango is the boarder of vehicle Bolero. On further interrogation, it was disclosed by the arrested persons that 7 other persons had fled and they were transporting 'ganja' from Adava side to Badagad under Dharakote P.S. and that all the vehicles were being loaded with 'ganja'. Upon inquiring about the contents of the polythene bags, all the accused persons confessed that the polythene bags contained

contraband i.e. 'ganja'. After confirming the same, the informant immediately observed the formalities as per the provisions of the NDPS Act and invited two independent witnesses for the purpose of search and seizure. The nature of contraband was determined in the presence of witnesses. Upon weighing the total 84 number of bags, it was discovered that the contraband 'ganja' weighed 30 quintals and 4.470 Kgs. including the weight of the container. The contraband 'ganja' was recovered from the exclusive and conscious possession of the Petitioner. The contraband and other articles were seized duly.

5. Learned Counsel for the Petitioner submits that the prosecution allegations leveled against the present Petitioner are false and baseless. Moreover, the Petitioner was not conscious of the possession of the contraband article. He further submits that the Petitioner is in custody since 13.09.2019 for more than three years. It is also submitted that the Petitioner is a driver and he was driving the alleged vehicle. He had no knowledge regarding the illegal transportation of ganja in the alleged vehicle. He further submit that charge-sheet has been filed in the meantime. One co-accused namely Bulu Sahu has been released on bail vide order dated 30.11.2021

passed by this Court in BLAPL No.7213 of 2021. He further submits that the Petitioner undertakes to abide the terms and conditions to be imposed on him in case he is released on bail.

6. Learned counsel for the State vehemently opposes the prayer for bail of the Petitioner.

7. The petitioner has already spent in custody for about more than three years and the trial has not yet been commenced. The Hon'ble Apex Court, time and again, has expressed displeasure on the delay of trial of the undertrial prisoners and their sufferings due to such delay. The Hon'ble Apex Court in *Hussainara Khatoon (I) v. State of Bihar*¹ has observed that "*speedy trial is not specifically enumerated as a fundamental right in India; it is implicit in a broad sweep and content of Article 21 of the Indian Constitution*". Certain provisions of the Cr.P.C. also impose a statutory obligation upon the courts to proceed the trial "expeditiously" so that the case could be disposed of without inordinate delay. The speedy trial of offences is a desirable goal because long delay can defeat justice. There is a common proverb - '*delay defeats justice*'. Hence, it is said that speedy justice is of the essence of an organised society and the cases should be decided as

¹ (1980) 1 SCC 81

early as possible. The present case fails to confirm to the aforesaid stand as articulated by the Hon'ble Supreme Court.

8. Considering the facts and submissions made and on going through the materials available on record, further keeping in view the surrounding circumstances including the period of detention of the Petitioner in custody, it is directed that the Petitioner be released on bail in the aforesaid case by the court in *seisin* over the matter on such terms and conditions as deemed just and proper including the conditions that:

- i. the Petitioner shall appear before the trial court on each date of posting of case;
- ii. he shall not indulge in any kind of criminal activity during bail period and shall not tamper with the evidence of prosecution witnesses in any manner.

9. Violation of any of the conditions shall entail cancellation of the bail.

10. Accordingly, the BLAPL is disposed of.

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

(Dr. S.K. Panigrahi)
Judge