

IN THE HIGH COURT OF ORISSA AT CUTTACK
BLAPL No.4044 of 2022

Samsan Harijan

....

Petitioner

Mr.R.L. Pattnaik, Adv.

-versus-

State of Odisha

....

Opp. Party

*Mr.G.R. Mohapatra,
ASC*

CORAM:
DR. JUSTICE S.K. PANIGRAHI

ORDER
03.08.2022

Order
No.

02. 1.This matter is taken up through hybrid mode.
2. Heard learned counsel for the parties.
3. The Petitioner being in custody in Mathili P.S. Case No.146 of 2020 corresponding to Special T.R. Case No.125 of 2020, pending in the court of the learned Sessions Judge-cum- Special Judge, Malkangiri, registered for the alleged commission of offence under Section 20(b)(ii)(C) of the N.D.P.S. Act, has filed this petition for his release on bail.
4. The allegation of the prosecution is that on 09.10.2020 during M.V. checking at about 7.30 P.M two numbers of two wheelers were coming in high speed from

Ramaguda side. On suspicion, the informant stopped the said two motor cycles and found first motor cycle was Hero H.F. Deluxe, black in colour having without registration number, second motor cycle was TVS XL, Maroon in colour having registration No.OD-24-D-9588. Two persons were in the first motor cycle and one plastic sack was kept in between them, the second motorcycle having registration OD24 - D - 9588 was riding by two persons and one plastic sack was kept in between them. 1st Motor cycle was riding by Samsan Harijan and pillion rider was Deepak Harijan and 2nd Motor Cycle was riding by Lokanath Harijan and pillion rider was Pradeep Kumar Suna. From 1st Motor cycle 26 Kgs and 300 grams and in 2nd Motor cycle 25 Kgs 800 grams contraband ganja has been seized. Accordingly, the F.I.R. was lodged.

5. Learned counsel for the Petitioner submits that the Petitioner has been falsely implicated in this case and the contraband ganja seized was not recovered from his conscious and exclusive possession. Moreover, the Petitioner is in custody since 10th October, 2020. Hence, he submits that the Petitioner may be enlarged on bail. It is further submitted that two co-accused who are similarly situated with the petitioner, have already been enlarged on bail by the order of this Court vide order

dated 05.07.2022 in BLAPL No. 4062 of 2022 and order dated 18.05.2022 in BLAPL No. 4021 of 2022. He has been languishing in custody since 10.10.2020. It is a fact that parity not a matter of right of the petitioner but in the present case the principle of parity does deserve some weightage.

6. Learned counsel for the State vehemently opposes the prayer for bail stating that the quantity of ganja seized is clearly above the commercial quantity prescribed under the Act which bars granting of bail. Also, there is nothing on record to suggest that the Petitioner has not committed the alleged offence.

7. The petitioner has already spent in custody for about more than one and half year and 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

¹ (1980) 1 SCC 81

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 organized society and the cases should be decided as early as possible. The present case fails to confirm to the aforesaid stand as articulated by the Hon’ble Supreme Court. It is a fact that ‘Ganja’ use has an unintended consequences for the society but detaining the petitioner for such a longer time without trial violates, erodes and simply abandons individual liberty and autonomy.

8. Without going into the merit of the matter at this stage facts and circumstances of the case and the period of detention, this BLAPL is allowed.

9. Let the petitioner be released on bail in the aforesaid case on such stringent terms and conditions deemed just and proper by the court in *seisin* over the matter with further 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.

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

11. Accordingly, the BLAPL is disposed of.

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

SD

(Dr. S.K. Panigrahi)
Judge

