

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL NO. 4412 of 2022

Salman Banka

....

Petitioner

Mr.A.K. Pattanayak,
Adv.

-versus-

State of Odisha

....Opposite Party

Mr.G.R.Mohapatra, ASC

CORAM:

JUSTICE S.K. PANIGRAHI

Order

No.

ORDER

30.06.2022

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1. This matter is taken up by hybrid mode.

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

3. The petitioner being in custody in connection with Damanjodi P.S. Case No. 50 of 2020 corresponding to T.R. Case No.35 of 2020 pending in the Court of learned Additional Sessions Judge-cum-Special Judge, Koraput for commission of offence under Section 20(b)(ii)(C) of the NDPS Act has filed this petition for his release on bail.

4. The prosecution case, in short, is that 24.06.2020, the informant and his staff, while performing patrolling duty, received information regarding transportation of contraband Ganja in a Max Pick Up Van having no number plate from Koraput to Kakriguma. The raiding team proceeded to Koraput and detained

the vehicle with three suspects including the petitioner. On being asked, the petitioner disclosed his name. The Police recovered 122 Kg. 205 grams of contraband Ganja from the offending vehicle having no number. After observing all formalities, the petitioner was arrested and forwarded him to the court.

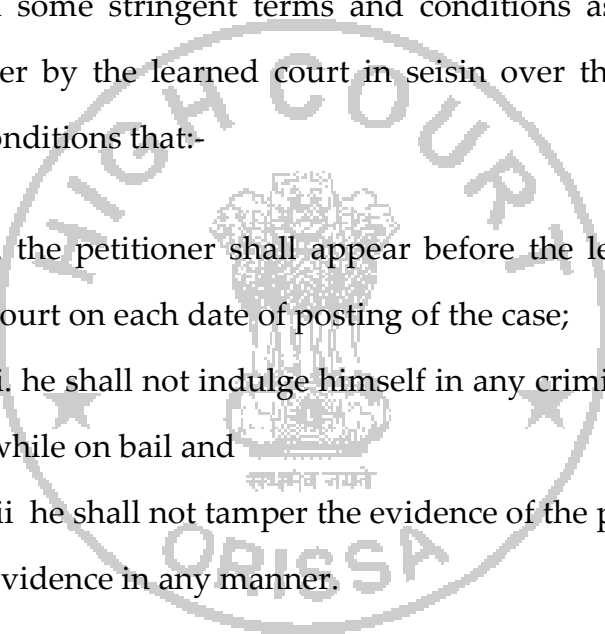
5. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in this case. There is no concrete materials available against the petitioner to connect him in the case. The petitioner was just a chance occupant in the vehicle as there was no public transport available. Nothing has been seized from the conscious possession of the petitioner. Further the prosecution witnesses have not stated any incriminating materials against the petitioner with respect to his involvement in commission of the crime. Though the charge sheet has already been submitted since long, the trial has not yet been commenced. It is further submitted that two co-accused who are similarly situated with the petitioner, have already been enlarged on bail by order of this Court vide order dated 19.05.2022 in BLAPL No.7265 of 2021 and order dated 24.06.2022 in BLAPL No.2383 of 2022. He has been languishing in custody since 24.06.2020. 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. It is further submitted that the petitioner has already spent in custody for about two years and trial has not yet been commenced and there is less likelihood of completion of trial in the near future. The Hon'ble Apex Court, time and again, has expressed displeasure on the delay of trial of the under trial prisoners and their sufferings due to such delay. The Hon'ble Apex Court in *Hussainara Khatoon (I) v. State of Bihar*,¹ 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*”. It is pertinent to mention that certain provisions of the Cr.P.C. 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 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 Apex 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.

¹ (1980) 1 SCC 81

7. Learned counsel for the State vehemently opposes the prayer for bail of the petitioner but concedes the detention of the petitioner in custody for more than one year.

8. Without going into the merit of the matter at this stage and based on the facts and circumstances of the case as well as period of detention of the petitioner in custody without trial, it is directed that the petitioner be released on bail in the aforesaid case with some stringent terms and conditions as deemed just and proper by the learned court in seisin over the matter with further conditions that:-

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- i. the petitioner shall appear before the learned trial court on each date of posting of the case;
 - ii. he shall not indulge himself in any criminal offence while on bail and
 - iii. he shall not tamper the evidence of the prosecution evidence in any manner.

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

10. The BLAPL is accordingly disposed of.

11. Issue urgent certified copy as per Rules.

(S.K.Panigrahi)
Judge