

IN THE HIGH COURT OF ORISSA AT CUTTACK
BLAPL No. 6092 of 2022

Kansa Kunderi

....

Petitioner

Mr. Anirudha Das, Adv.

-versus-

State of Odisha

....

Opp. Party

*Mr. G.R. Mohapatra,
ASC*

CORAM:
DR. JUSTICE S.K. PANIGRAHI

ORDER

28.09.2022

Order
No.

04. 1.This matter is taken up through hybrid mode.
2. Heard learned counsel for the parties.
3. The petitioner being in custody in connection with Gocchapada P.S. Case No.45 of 2020 corresponding to C.T. Case No. 38 of 2020 pending in the court of the learned Sessions Judge-cum-Special Judge, Kandhamal, Phulbani, registered for the alleged commission of offence under Section- 20(b)(ii)C of NDPS Act, has filed

this application under Section 439 of Cr.P.C. for his release on bail.

4. The brief facts of the case are that on 27.07.2020 on 6.00 A.M., the informant and his staff upon receiving credible information of the transportation of huge quantity of Ganja by the petitioner and his family members, reached the spot along with his staff. On reaching, the police found four plastic bags kept in the front yard of the petitioner's house. The bags were searched and Contraband Ganja weighing to a total of 104 Kgs was recovered.

5. Learned counsel for the petitioner submits that the petitioner has no nexus in the alleged offence. The petitioner has been falsely implicated in this case due to the ulterior motive of the informant. The basic ingredients are not at all attributed against the petitioner for the alleged offence. The petitioner is languishing in custody since 28.07.2020.

6. Learned counsel for the State opposes the bail prayer of the petitioner as the quantity of ganja seized is more than the commercial quantity.

7. The petitioner has already spent more two years in custody 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 under trial

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 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

¹ (1980) 1 SCC 81

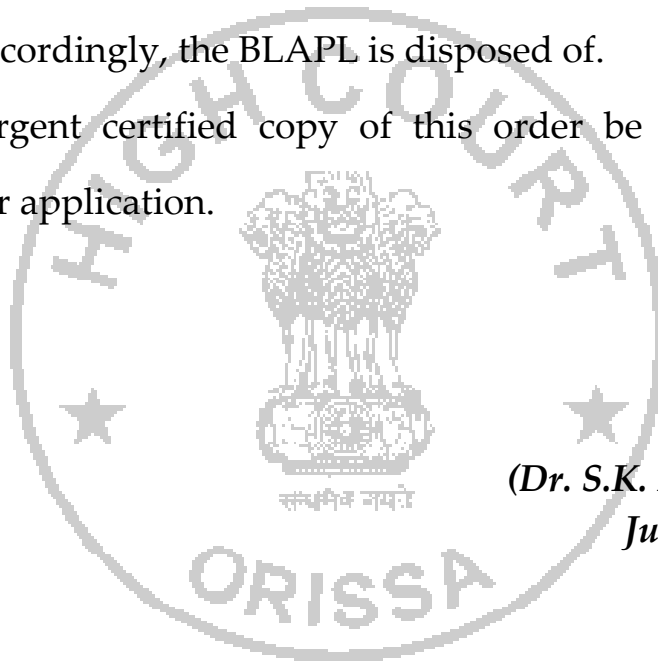
and proper by the court in *seisin* over the matter with further conditions that:

- 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.



(Dr. S.K. Panigrahi)
Judge

SD