

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL NO. 6699 of 2022

Ajaya Mohapatra

....

Petitioner

Mr.Devashis Panda,

Sr. Adv.

Ms A.Mehta,Adv.

-versus-

State of Odisha

....Opposite Party

Mr.G.R.Mohapatra, ASC

CORAM:

DR JUSTICE S.K. PANIGRAHI

Order
No.

ORDER
23.12.2022

0. 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 S.T.F. P.S. Case No.17 of 2020 corresponding to T.R. Case No.226 of 2020 pending in the Court of learned Second Addl. Special Judge, Bhubaneswar for commission of offence under Section 21(C) & 29 of the N.D.P.S. Act has filed this petition for bail.
4. Bereft of unnecessary details, the gist of prosecution case is that on 01.06.2020, the informant, who was the Inspector of Police, STF, Bhubaneswar on being received credible information regarding some habitual traders of brown sugar were planning to deliver such contraband in Bhubaneswar, she along with other

staff proceeded to Kalinga Vihar and they detained the petitioner who was coming from Khurda by a Hero Honda Motor cycle bearing Regd. No. OR 02 D 2640. On being searched, one white polythene pocket containing 1.008 Kg of contraband brown sugar was recovered from the petitioner. On completion of investigation, charge sheet was submitted against the petitioner and another. Thereafter, the petitioner was forwarded to court on 01.06.2020.

5. Learned counsel for the petitioner submits that there are no reliable materials implicating petitioner with the recovery of contraband from the dicky of the motorcycle available on record to connect him in the case and the alleged witnesses to seizure were procured by the informant cannot be said to be independent witnesses. It is further submitted that the vehicle belongs to another person wherefrom contraband article has been recovered and seized. Hence, he cannot be attributed with conscious possession of the contraband found.

6. Learned counsel for the petitioner further placed an order of the Hon'ble Apex Court in *Special Leave to Appeal(Crl.) No(s). 5530 of 2022 (arising out of impugned final judgment and order dated 27.04.2022 in R/CRLM No. 3279/2022* passed by the High Court of Gujarat at Ahmedabad) wherein the petitioner has been released on bail only on the ground of that he has spent about

two years in custody and conclusion of trial will take some time.

The operative part of the order is extracted hereunder:

“Consequently, without expressing any views on the merits of the case and taking into consideration the custody period of the petitioner, this special leave petition is accepted and the petitioner is ordered to be released on bail subject to his furnishing the bail bonds to the satisfaction of the Special Judge/ concerned Trial Court,”

7. Similarly, in the instant case the petitioner has already spent for more than two years in custody and as per status report received from the 2nd Additional Sessions Judge, Bhubaneswar , it is ascertained that charge has been framed on 13.08.2021 and summons have been issued to the witnesses, but no witness has been examined in this case till date 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 prisoner and his suffering 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

¹ (1980) 1 SCC 81

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 detaining the petitioner for a longer time without trial violates, erodes and simply abandons individual liberty and autonomy.

8. Mr. G.R.Mohapatra, learned Additional Standing 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 two years.

9. 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:-

- 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.

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

11. The BLAPL is accordingly disposed of.

12. Issue urgent certified copy as per Rules.

(Dr. S.K. Panigrahi)
Judge



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