

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL NO. 6804 of 2022

Gurudev Mallik & Anr.

....

Petitioners

Mr.Anirudha Das, Adv.

-versus-

State of Odisha

....Opposite Party

Mr.G.R.Mohapatra, ASC

CORAM:

JUSTICE S.K. PANIGRAHI

Order

No.

ORDER

10.10.2022

01. 1. This matter is taken up by hybrid mode.
2. Heard learned counsel for the petitioners and learned counsel for the State.
3. The petitioners being in custody in connection with Kantamal P.S. Case No.103 of 2020 corresponding to Special (NDPS)-30/2020 (CT Case No.479 of 2020), pending in the court of learned Sessions Judge-cum-Special Judge, Boudh, registered for the alleged commission of offence under Sections 20(b)(ii)(C) of the NDPS Act have filed this application under Section 439 of Cr.P.C. for their release on bail.
4. The allegation of the prosecution is that on 22.07.2020 at about 1 P.M. the Inspector In-charge of Police, Kantamal P.S. along with his staff on receiving reliable information with regard to transportation of contraband 'ganja' by two persons in a Maruti Suzuki Ecco 5 Star bearing Regd.No.OD-27-4511 from village

Balantumba towards Dapala, rushed to the spot and detained the said vehicle wherein both the petitioners were occupants. On search of the vehicles, two jari bags containing 64 Kgs of 'ganja' each in total 128 Kg of 'ganja' were found inside the vehicle which was recovered and seized. Thereafter the Police arrested them after observing all the formalities.

5. Learned counsel for the petitioners submits that both the petitioners are the occupants of the alleged vehicle. He further submits that contraband articles were not seized from the possession of the present petitioners. Moreover, they have been languishing in jail custody since 22.07.2020.

6. It is further submitted that the petitioners have already spent in custody for more than two years and trial has not yet been commenced and also 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

¹ (1980) 1 SCC 81

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 petitioners for such a longer time without trial violates, erodes and simply abandons individual liberty and autonomy.

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 two years.

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 petitioners in custody without trial, it is directed that the petitioners 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 petitioners shall appear before the learned trial court on each date of posting of the case;
- ii. they shall not indulge themselves in any criminal offence while on bail and

iii they 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



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