

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC Nos.2358 & 2359 of 2019

Nikita Majhi @ Minati @ Bimbulu Petitioners
Narengoka and others

Mr.P.K. Jena, Advocate

-Versus-

State of Odisha Opposite Party
Mr. P.K. Mohanty, ASC

CORAM:
JUSTICE R.K. PATTANAİK

DATE OF HEARING: 20.12.2021 DATE OF ORDER: 07.01.2022

1. Applications under Section 482 Cr.P.C. stand filed by the petitioners to quash charge sheet Nos.24 and 25 under Annexure-4 and the criminal proceedings in G.R. Case Nos.6 &7 of 2011 arising out of Badagada P.S. Case Nos. 4(4) & 5(5) dated 19.01.2011 respectively arising out of the file of learned J.M.F.C., Sorada on the grounds, inter alia, that it is required in the interest of justice with appropriate consequential directions.

2. Since the matters relate to the petitioners and the reliefs are similar, the present applications have, therefore, been clubbed together for disposal by a common order.

CRLMC Nos.2358 of 2019:

3. Instant application is in respect of G.R. Case No.6 of 2011. In fact, an F.I.R. was lodged on 19.01.2011 at Badagada P.S. stating therein that during the midnight of 18.01.2011, some unknown persons being armed reached at the spot, where the construction of a village road under PMGSY was in progress and all of them threatened the work force and then damaged the vehicles by setting them to fire and in course of events, kidnapped the driver of a vehicle but later on, set him free. The F.I.R. disclosed the other

overt acts committed during the incident. After F.I.R. (Annexure-1) being lodged, Badagada P.S. Case No.4(4) was registered under Section(s) 147/148/435/379/366 and 149 IPC and Section 25 of the Arms Act which corresponds to G.R. Case No. 6 of 2011. A preliminary charge sheet (Annexure-4) was filed against the petitioners on 20.02.2016 under Section(s) 120-B/435/379 and 364 IPC read with Section 17 of Criminal Law Amendment Act keeping the investigation open in terms of Section 173 (8) Cr.P.C.

CRLMC Nos.2359 of 2019:

4. Whereas, in the present case, the F.I.R. (Annexure-1) was lodged on 19.01.2011 at the same P.S. for another incident with the information that some miscreants arrived and then committed the alleged mischief at the construction site and details being mentioned therein. Accordingly, Badagada P.S. Case No. 5(5) was registered under Section(s) 435 and 427 IPC which corresponds to G.R. Case No.7 of 2011 pending in the file of learned court below. After investigation was completed, charge sheet (Annexure-4) was filed on 20.02.2016 under Section (s) 120-B/435 and 427 IPC and Section 17 of the Criminal Law Amendment Act.

5. The challenges with regard to the criminal proceedings in G.R. Case Nos.6 and 7 of 2011 which are arising from Badagada P.S. Case Nos. 4(4) & 5(5) respectively are on common grounds. The petitioners have, in fact, approached this Court to quash the charge sheets dated 20.02.2016 and the proceedings primarily on account of unauthorized detention, delay in taking cognizance of offences and also commencement of trial.

6. On perusal of the records and Annexure-4, in particular, it is made to reveal that the petitioners were remanded in both the cases in the year 2015. The petitioners, while being in custody and lodged at R. Udayagiri Sub-Jail were implicated in the above cases

and remanded on 26.08.2015 and ever since, they are in judicial custody. The charge sheets have been filed in the month of February, 2016. The alleged occurrences are of the year 2011. The petitioners complicity in the incidents was made in 2015 after some evidence was collected.

7. Learned counsel appearing for the petitioners contend that the accused persons have been implicated without any convincing evidence and that too, on the basis of statements of some witnesses recorded under Section 161 Cr.P.C. which was almost after four years from the dates of alleged occurrences. It is further contended that the learned court below did not take cognizance of the offences in G.R. Case Nos. 6&7 of 2011 awaiting sanctions from the Government and D.M. which delayed the proceedings. It is also contended that the petitioners were not regularly produced before the court concerned and suffered unauthorized detention. In view of the above, according to the learned counsel appearing for the petitioners, the proceedings in G.R. Case Nos. 6 and 7 of 2011 should be quashed with a direction to release them from judicial custody immediately with consequential orders as prayed for.

8. This Court directed the learned Sessions Court to submit status report in respect of S.T. Case No.53 of 2020 which corresponds to Badagada P.S. Case No.4(4) of 2011 and the same was received vide letter No.2786 dated 14.12.2021 with an intimation that production of the petitioners is awaited for framing of charges. It is also intimated that a report has been called for from the Superintendent, Special Sub-Jail, Bhanjanagar since the petitioners are not being produced. The certified copies of the orders in G.R. Case Nos. 6 and 7 of 2011 under Annexure-5 show that the petitioners were not produced before the court at Sorada from the sub-jail on number of occasions and not only that, the intermediate custody warrants were not even submitted to the

court for the purpose of remands. It is, thus, being contended by the learned counsel that considering the long delay in commencement of trial besides unauthorized detention ever since 2015, the petitioners should be released forthwith and entire proceedings should be quashed along with orders of compensation and while contending so, the judgment of the Supreme Court in *Hussainara Khatoon and others Vrs. Home Secretary, State of Bihar, Patna* reported in AIR 1979 SC 1369 was placed reliance on.

9. For having no sanction, as it appears, the court at Sorada waited and for that, some amount of delay seems to have occasioned. In fact, from Annexure-4, it is made to suggest that in both the cases, charge sheets were filed for the alleged offences awaiting receipt of sanction orders. The contention of the learned counsel for the petitioners regarding delay in taking cognizance of offences has not been seriously questioned from the side of the State. It is always expected that sanction is obtained so that cognizance could be taken forthwith. If in respect of certain offences sanction is required, it would be obvious for a court not to take cognizance of it. In the instant case, there is no denial to the fact that delay has resulted in taking cognizance of the offences awaiting receipt of sanction orders. It is not known to this Court, if at all sanction orders were obtained. In any case, as it appears, the court proceeded with the matters post submission of charge sheets after waiting for some time for the sanction orders to arrive.

10. In so far as the non-production of the petitioners before the court is concerned, the certified copies of the orders in G.R. Case Nos.6 and 7 of 2011 make it evident that it did happen for long since 2015. Even the status report received from the court of learned Additional District and Sessions Judge, Bhanjanagar in respect of G.R. Case No.6 of 2011 revealed that the Superintendent, Special Sub-Jail, Bhanjanagar has been called upon

to submit a report for such non-production of petitioners. It, prima facie, proved that the petitioners were not produced on number of dates before the court at Sorada and the Sessions court post commitment in S.T. Case No.53 of 2020 vis-a-vis G.R. Case No.6 of 2011. Such a situation, as to non-production of the petitioners cannot be comprehended. In fact, non-production is a matter which was required to be addressed promptly. The court at Sorada vide orders under Annexure-5 indicated about the fact of non-production of the petitioners due to want of escort party. The repeated remands of the petitioners without production should have been avoided. It is not known as to if any step had been taken to ensure regular production of the petitioners on account of the alleged default.

11. As per the submission of the learned counsel appearing for the petitioners, the accused persons have been implicated almost after four years of the alleged occurrences which creates a reasonable doubt them of having been falsely implicated. It is also contended that basing upon statements of some witnesses recorded under Section 161 Cr.P.C. nearly after four years from the date of incidents, the petitioners were arrested. A case of false implication vis-à-vis co-accused, namely, Sangram Keshari Mohanty which was deprecated by the Supreme Court with an order dated 06.04.2015 in W.P.(Crl.) No.22 of 2015 has been brought to the attention of this Court. A copy of order dated 06.04.2015 of the Supreme Court in the aforesaid case is enclosed at Annexure-6.

12. The aspect of delay is also raised by the learned counsel for the petitioners. In Hussainara Khatoon case (supra), the Supreme Court interpreted Article 21 of the Constitution of India and observed that speedy trial is a fundamental right. It is a decision which was based on detention of under trial prisoners in Bihar jails and few of them were found serving sentences for a very

long time, in fact, a period even longer than their actual span of imprisonments. In that context, the Supreme Court held and observed that long incarceration defeating the fundamental right to speedy trial is in violation of Article 21 of the Constitution of India. In so far as the present case is concerned, the petitioners are in judicial custody since 2015 and it seems that there has been no satisfactory progress so far been made in both the criminal proceedings. The charge sheets were filed long back in 2016. The investigation is claimed to be still open. It has been intimated to the Court that in respect of G.R. Case No.6 of 2011, the trial is likely to commence which is also revealed from the status report received from the learned Sessions Court to which it has been committed. The charges are to be framed in that case on 17.01.2022. The stage in respect of the other case is not known to the Court. Any ways, it appears that much headway has not taken place especially with regard to the trial in both the cases.

13. In the aforesaid backdrop and the fact that the petitioners are in judicial custody for nearly six years by now, the Court is of the considered view that there is an urgent need and necessity to direct the concerned courts to expedite disposal of the cases and to accomplish it within a stipulated time. Whether the material evidence collected after four years in order to rope in the petitioners to be adequate or otherwise is a matter which is within the domain of trial to be examined by the respective courts. But the Court finds that there has already been considerable delay in commencement of the trial having regard to the fact that the alleged incidents are of the year 2011. It is also noted that the petitioners were continued to be detained without being produced and remanded by the learned court below for non-availability of escort party, a situation which cannot be countenanced. In any case, at this distant point of time, without any consequential orders

being passed, it would be expedient to direct the respective courts to speed up the process of trial of the cases. Again considering the period detention since 2015 and the fact that the petitioners shown to have been implicated on remand almost after 04 years from the dates of alleged incidents and morefully being conscious of rights of the prisoners and the rule of law as enunciated in *Hussainara Khatoon* case (supra), the Court is of the humble view that they should, pending trial, be enlarged on bail taking into account the peculiar facts and circumstances of the cases and accordingly, it is ordered.

14. In the result, applications under Section 482 Cr.P.C. stand disposed of in the above terms and to the extent indicated with the following direction that the respective courts concerning G.R. Case Nos.6&7 of 2011 shall do well to expedite early commencement of trial and ensure its completion preferably within a period of six months and in any case, not later than 31st October, 2022, unless there is any impediment and in the meantime, to release the petitioners on bail on such terms and conditions, as deemed just and proper, by imposing conditions sufficient to ensure their attendance during trial.

15. A copy of the above order is directed to be communicated to the courts concerned forthwith for compliance.

16. Both the CRLMCs are accordingly disposed of.

(R.K. Pattanaik)
Judge

Dated the 7th January, 2022/KC Bisoi/Secretary