

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL NO. 7419 of 2022

Nilamani Luha

....

Petitioner

Mr.Jugala Kishore Panda, Adv

-versus-

State of Odisha

...

. Opposite Party
Mr.Saswat Das, AGA

CORAM:

JUSTICE S.K. PANIGRAHI

Order
No.

ORDER
25.08.2022

- 02.
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 Phiringia P.S. Case No.85 of 2020 corresponding to C.T. Case No.57 of 2020 pending in the Court learned District & Sessions Judge-cum-Special Judge, Kandhamal, Phulbani for the alleged commission of offence under Sections 20(b)(ii)(C) and 29 of the N.D.P.S. Act has filed this petition for his released on bail.
 4. The prosecution case, in brief, is that on 17.10.2020 at 5.30 A.M. the informant-Pradeep Kumar Raul, S.I. of Phiringia P.S. received information that four persons were in possession of quantity of ganja and were transporting the same by means of a Pulsar bike bearing Registration No.OD-03-P-4381 and another Pulser bike

without number and they were to pass through Masiripada Chhak. Then, the informant along with his staff proceeded to Masiripada Chhak and detained both the motorcycles along with its rider and pillion rider. The informant seized 51 Kg. 300 grams from each of the bike, totaling 102 Kg. 600 gms. including the bags from the possession of the petitioner and co-accused persons.

5. Learned counsel for the petitioner submits that the petitioner has been in custody since 17.10.2020 and there is no specific overt act attributed against the petitioner. He further submits that 51 Kgs of ganja has been seized from the possession of the present petitioner and one co-accused who is similarly situated with the petitioner, has already been enlarged on bail by order of this Court vide order dated 09.05.2022 in BLAPL No.2055 of 2021. He has been languishing in custody since 17.10.2020. 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.

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 as well as the factum of release of co-accused who is similarly situated with the petitioner.

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

¹ (1980) 1 SCC 81

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.

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