

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.6303 of 2020

Chandra Sekhar Khora

....

Petitioner

Mr. Amit Prasad Bose, Advocate

-versus-

State of Odisha

....

Opposite Part

Mr. P. C. Das, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

13.10.2022

Order No.

26.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).

2. Heard learned counsel for the Petitioner and learned Additional Standing Counsel.

3. This is an application under Section 439 of the Criminal Procedure Code.

4. The petitioner being in custody in connection with Jeypore Sadar P.S. Case No. 147 of 2020 corresponding to T.R. Case No.46 of 2020 pending in the Court of learned Sessions Judge-cum-Special Judge, Koraput, Jeypore registered for the alleged commission of offence under Section 20(b)(ii)(C) of the NDPS Act has filed this petition for his release on bail.

5. The allegation of the prosecution is that on 09.08.2020 at about 3 P.M. while the Police were performing patrol duty near Patraput Bridge they found a truck bearing Registration number WB-02G6732 was coming from Machhakund side escorted by another

Bolero vehicle bearing Regd. No.OD-33-W-3690 wherefrom total 'ganja' was 937.2 Kg. kept in poly packs. They detained all the accused persons including the petitioner who was driver of the Bolero vehicle. On being asked, they disclosed their identities but due to their non production of authenticated document with respect to such transportation of bulk quantity of ganja, all the contraband ganja was seized from the offending vehicle. After observing all formalities, all the accused persons including the petitioner was arrested and forwarded them to the court.

6. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in this case. There is no concrete material available against the petitioner to connect him in the case. The petitioner was driver of the Bolero vehicle. He had no knowledge about the loading of ganja in his vehicle. He was only driving the vehicle as per instruction of his owner. Nothing has been seized from the conscious possession of the petitioner. He is in custody since 09.08.2020.

7. 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, 11 (1980) 1 SCC 81*** 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.

8. 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. 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 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 not be involved in any offence of similar nature;
- II. he shall not tamper with the prosecution evidence or try to threaten or influence the witnesses in any manner whatsoever;
- III. he shall not make any default in attending the court during trial;
- IV. he shall appear before the concerned Police Station once in a month preferably on ‘Sunday’

in between 10.00 A.M. to 1.00 P.M. till conclusion of trial; and

- V. he shall not leave the jurisdiction of the Court in seisin over the matter and shall furnish his address and mobile number to the police from time to time.

Violation of any of the terms and conditions shall entail cancellation of bail.

9. It is open for the court in seisin over the matter to impose any other conditions as may be deemed just and proper.

10. It is further directed that the bail granted to the Petitioner is subject to the condition that learned court below shall verify whether the Petitioner has any criminal antecedents of similar nature. In the event it is found that the Petitioner has any criminal antecedents, this bail order shall automatically stand revoked.

11. It is made clear that if the petitioner fails to attend the court on the date fixed on a single occasion, this order shall stand automatically revoked and the learned court below is at liberty to issue N.B.W. against the petitioner forthwith.

12. The Bail Application is accordingly disposed of.

Urgent certified copy of this order be granted on proper application.

(A.K. Mohapatra)
Judge