

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.7342 of 2021

Sumanta Gamango

.... Petitioner
M/s.J.K.Panda, Advocate

-versus-

State of Orissa

.... Opp. Party
M/s. P.K.Patnaik, A.G.A.

CORAM:

JUSTICE G. SATAPATHY

ORDER

09.11.2022

Order No.

05. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. This is a successive bail application U/S. 439 of Cr.P.C. by the Petitioner for grant of bail in connection with Berhampur Sadar P.S. Case No.105 of 2015 corresponding to G.R. Case No.71 of 2015-N pending in the Court of learned 3rd Additional District & Sessions Judge, Berhampur for commission of offence punishable U/Ss. 20(b)(ii)(C) of the N.D.P.S. Act on the allegation of possessing 78 Kgs. 257 grams of contraband Ganja.
3. In the course of hearing of the bail application, Mr. J.K.Panda, learned counsel for the petitioner submits that although the allegation is for possessing commercial quantity of contraband Ganja but the trial is yet to be completed, even after more than seven years detention of the petitioner in judicial custody and five out of six accused persons have already been granted bail by this Court and the petitioner was also released on interim

bail but as a law abiding citizen, he has surrendered to the custody after availing the interim bail and, therefore, there is no apprehension that the petitioner would abscond in case of enlargement on bail. It is further submitted that the petitioner is a permanent resident of village Badakua P.S.-Adaba in the district of Gajapati and as such there is no chance of his avoiding the process of trial.

4. On the contrary, learned counsel for the State opposes the bail application of the petitioner vehemently by inter alia contending that the release of the petitioner on bail would encourage him to repeat the offence again and again. It is accordingly prayed to reject the bail application of the petitioner.

5. Perused the report as called for by this Court in which the learned 3rd Addl. District and Sessions Judge, Berhampur being in charge has furnished the report stating therein that the petitioner is in custody since 14.06.2015 and was also released on interim bail from 25.09.2017 to 14.10.2017 but he surrendered to the custody after availing the interim bail. Further, the report discloses that 14 out of 28 charge sheet witnesses have already been examined till date but after transfer of the Presiding Officer, the Court in which trial of this case was going on is lying vacant and thereby, the trial has suffered.

6. In view of the above report indicating the period of custody of the petitioner since 14.06.2015, which is around more than seven years till date and taking into consideration the release of 5 out of 6 accused persons on bail in BLAPL No. 4250 of 2016, 3551 of 2021, 107 of 2022, 3216 of 2017 and 239 of 2017 and keeping in view of the personal liberty of the petitioner with utmost priority and taking into consideration the unlikelihood of trial being completed in near future as admittedly only 14

out of 28 charge sheet witnesses have been examined till today even after little more than seven years of judicial custody of the petitioner and regard being had to the fact that the petitioner has already undergone more than half of the minimum sentence of imprisonment and the law laid down by Apex Court in ***Supreme Court Legal Aid Committee(Representing under trial prisoners) Vrs. Union of India; (1994) 6 SCC 731***, this Court passes an order in favour of the petitioner despite the rigors of Section 37 of the N.D.P.S. Act granting bail to him in this case.

7. Hence, the prayer for bail of the petitioner is allowed and the Petitioner be released on bail on furnishing bail bonds in the sum of Rs.1,00,000/- with two sureties each for the like amount to the satisfaction of the learned Court in seisin of the case on such terms and conditions as deem fit and proper with further conditions that the petitioner shall not commit similar type of offence while on bail and that the petitioner shall not leave the jurisdiction of the trial Court without prior permission till conclusion of the trial and that the petitioner shall attend the trial Court on each date of posting of the case unless his attendance is dispensed with and that the petitioner shall report attendance in the jurisdictional Police Station once in a week i.e. on every Sunday in between 11 A.M. to 1 P.M. The jurisdictional Police Station shall not detain the petitioner unnecessarily after recording his attendance beyond the time as stipulated.

8. Accordingly, the BLAPL stands disposed of.

9. Urgent certified copy of the order be granted on proper application.

(G. Satapathy)
Judge

