

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.402 of 2020

M.D. Jafar @ Mohammed Jafar @ Petitioner
Budu.

M/s. Jyotirmaya Sahoo,
S.K. Pattnaik, Advocates

-versus-

State of Odisha. Opposite Party
Addl. Standing Counsel – For the State

CORAM:
JUSTICE S. PUJAHARI

ORDER
13.05.2022

Order
No.

08. **1.** The petitioner who is one of the accused in T.R. Case No.19 of 2019 registered under Section 20(b)(ii)(C) of the NDPS Act pending in the court of the learned Sessions Judge-cum-Special Judge, Koraput has filed this petition under Section 401 read with Section 397 of Cr.P.C. seeking for quashing of the order dated 04.10.2019 passed by the Court below and for his release on bail on account of non-completion of investigation by the Investigating Officer

within the stipulated time in view of Section 167(2) of Cr.P.C. read with Section 36A of the NDPS Act.

2. Heard the learned counsel for the parties and perused the impugned order and other papers on record.

3. The aforesaid case has been registered against the petitioner and co-accused persons for the alleged possession and transportation of 27 Kgs. of 'Ganja', and the petitioner is in custody since 15.04.2019. While the stipulated period was going to expire on 12.10.2019, the I.O. made an application through the learned Special Public Prosecutor seeking for extension of time for submission of charge-sheet on the ground stated. As it appears, the learned Court below vide the impugned order dated 04.10.2019 after having heard the learned Special Public Prosecutor extended thirty days time with effect from 13.10.2019 for submission of charge-sheet by the I.O. It is now the contention of the accused-petitioner that since the

learned Court below passed the impugned order allowing extension of time to the I.O. without issuing any notice or affording any opportunity to the accused-petitioner to have his say, the same is illegal. He relies on a decision of this Court in the case of **Lambodar Bag vrs. State of Orissa**, reported in (2018) 71 OCR 31 and also the order dated 20.08.2020 of this Court passed in BLAPL No.10152 of 2019 granting bail to a co-accused of the petitioner in the case at hand.

4. In the context, it would be apt to have a reference to the decision of the Apex Court in the case of **Hitendra Vishnu Thakur vrs. State of Maharashtra**, reported in (1994) 4 SCC 602. Although in the said case the question involved was in relation to sub-section (4) of Section 20 of the TADA Act, the said provision and Section 36-A(4) of the NDPS Act being *pari materia*, the principle settled therein assumes relevance in the present context. In

the case of ***Hitendra Vishnu Thakur (supra)***, it was held as follows:-

“21. Thus, we find that once the period for filing the charge-sheet has expired and either no extension under clause (bb) has been granted by the Designated Court or the period of extension has also expired, the accused person would be entitled to move an application for being admitted to bail under sub-section (4) of Section 20 TADA read with Section 167 of the Code and the Designated Court shall release him on bail, if the accused seeks to be so released and furnishes the requisite bail. We are not impressed with the argument of the learned counsel for the appellant that on the expiry of the period during which investigation is required to be completed under Section 20(4) TADA read with Section 167 of the Code, the court must release the accused on bail on its own motion even without any application from an accused person on his offering to furnish bail. In our opinion an accused is required to make an application if he wishes to be released on bail on account of the ‘default’ of the investigating / prosecuting agency and once such an application is made, the court should issue a notice to the public prosecutor who may either show that the prosecution has obtained the order for extension for completion of investigation from the court under clause (bb) or that the challan has been filed in the Designated Court before the expiry of the prescribed period or even that the prescribed period has actually not expired and thus resist the grant of bail on the alleged ground of ‘default’. The issuance of notice would avoid the possibility of an accused obtaining an order of bail under the ‘default’ clause by either deliberately or inadvertently concealing certain facts and would avoid multiplicity or proceedings. It would, therefore, serve the ends of justice if both sides are heard on a petition for grant of bail on account of the prosecution’s ‘default’. Similarly, when a report is submitted by the public prosecutor to the Designated Court for grant of extension under clause (bb), its notice should be issued to the accused before granting such an extension so that an accused may have an opportunity to oppose the extension on all legitimate and legal grounds available to him. It is true that neither clause (b) nor clause (bb) of sub-section (4) of Section 20 TADA specifically provide for the issuance of such a notice but in our opinion the issuance of such a notice must be read into these provisions both in the interest of the

accused and the prosecution as well as for doing complete justice between the parties. This is a requirement of the principles of natural justice and the issuance of notice to the accused or the public prosecutor, as the case may be, would accord with fair play in action, which the courts have always encouraged and even insisted upon. It would also strike a just balance between the interest of the liberty of an accused on the one hand and the society at large through the prosecuting agency on the other hand. There is no prohibition to the issuance of such a notice to the accused or the public prosecutor in the scheme of the Act and no prejudice whatsoever can be caused by the issuance of such a notice to any party. We must as already noticed reiterate that the objection to the grant of bail to an accused on account of the 'default' of the prosecution to complete the investigation and file the challan within the maximum period prescribed under clause (b) of sub-section (4) of Section 20 TADA or within the extended period as envisaged by clause (bb) has to be limited to cases where either the factual basis for invoking the 'default' clause is not available or the period of completion of investigation has been extended under clause (bb) and the like. No other condition like the gravity of the case, seriousness of the offence or character of the offender etc. can weigh with the court at that stage to refuse the grant of bail to an accused under sub-section (4) of Section 20 TADA on account of the 'default' of the prosecution."

5. In the case at hand, admittedly, the learned Court below allowed extension of time to the I.O. for submission of charge-sheet, without any notice to the petitioner who has been in custody. For the selfsame reason, this Court has granted bail to a co-accused vide the order dated 20.08.2020 in BLAPL No.10152 of 2019.

6. Keeping in view the enacted provision of default bail and the settled principle of law, this Court finds merit in the petition of the accused-petitioner and his claim for bail.

7. Let the accused-petitioner be released on bail on such terms and conditions as would be deemed just and proper by the learned trial Court.

8. With the direction as above, the CRLREV stands disposed of.

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

(S.Pujahari)
Judge

MRS