

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL NO. 9496 of 2022

Suroj Khilla @ Khillo

....

Petitioner

Mr.Ananta Narayan
Pattanayak, Adv.

-versus-

State of Odisha

....*Opposite Party*

Mr.D.Mund, AGA

CORAM:

JUSTICE S.K. PANIGRAHI

Order
No.

ORDER

19.10.2022

01. 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 connection with T.R. Case No.1 of 2021 arising out of Semiliguda P.S. Case No.2 of 2021 pending in the court of the learned Sessions Judge-cum-Special Judge, Koraput for commission of offences under Sections 20(b)(ii) (C)/29 of N.D.P.S. Act has filed this application under Section 439 of the Cr.P.C. for his release on bail.
4. Brief fact of the case is that on 03.01.2021 while the informant along with his other police staffs were performing patrolling, they got a reliable information that some persons were illegally transporting ganja by a Scorpio vehicle bearing Registration No. OD-02-AJ-8899 and proceeded to the spot. After some time they

found one white colour Scorpio bearing Registration No. OD-02-AJ-8899 was coming from the Kunduli to Kokriguda Chhak being escorted by two persons riding black colour Honda Grazia Scooty bearing Registration No.OD-10M-7128. They detained the Scooty first but the pillion rider of the Scooty managed to escape from the spot. Thereafter, they signaled to stop the Scorpio vehicle of the aforesaid number wherein three out of four occupants ran towards the nearest jungle. However, the driver of the Scorpio vehicle was arrested and on being asked, he disclosed his name. On being searched, a number of plastic bags weighing about 110 Kg of 'ganja' were recovered in their presence. After observing all formalities, they seized the same and forwarded them to the Court after arrest.

5. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in this case. The petitioner is stated to be moving in a Honda Grazia Scooty bearing Registration No.OD-10-M-7128. It was seized earlier to the seizure of Scorpio vehicle and the petitioner was the rider of it. Nothing has been seized from the conscious possession of the petitioner. There is no concrete materials available against the petitioner to connect him in the case. He had no knowledge about the transportation of ganja in the scorpio vehicle. Further the prosecution witnesses have not stated any incriminating materials against the petitioner with respect to his involvement in commission of the crime. Though the charge sheet has already been submitted since long

the charge has not yet been framed. It is further submitted that one co-accused who is similarly situated with the petitioner, has already been enlarged on bail by order of this Court vide order dated 09.11.2021 in BLAPL No.3398 of 2021. He has been languishing in custody since 03.01.2021. 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 more than one and half year 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

¹ (1980) 1 SCC 81

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 and half 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 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.

LB

