

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 3002 of 2022

Satya Sundar Swain

....

Petitioner

Ms. Babita Sahu, Advocate

Mr. D.R.Bhokta, Advocate

-Versus-

State of Odisha

....

Opposite Party

Mr. T.K.Praharaj, SC

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

01.12.2022

Order No.

01. 1. Heard learned counsel for the petitioner and learned counsel for the State.
2. Instant petition under Section 482 Cr.P.C is filed at the behest of the petitioner for quashing of the F.I.R., issuance of NBWA dated 28th December, 2009 passed in T.R. Case No. 7 of 2009 and the entire criminal proceeding in connection with G.R. Case No. 02 of 2009(N) corresponding to Jarada P.S. Case No. 100 of 2009 pending in the file of learned Sessions Judge-cum-Special Judge, Ganjam-Gajapati at Berhampur on the grounds stated therein.
3. Copy of the F.I.R. as at Annexure-1 indicates that Jarada P.S. Case No. 100 of 2009 was registered under Section 20(b) and 29 of the NDPS Act against the named accused persons.
4. Learned counsel for the petitioner submits that all other accused persons have been acquitted of the charges levelled against them after a full-fledged trial and that apart, the complicity of the

petitioner is alleged on the strength of confessional statement of co-accused and under the above circumstances, it would be unjustified to subject him to a trial as the same would amount to abuse of process of law. A judgment of this Court in respect of some of the accused persons, a copy of which is at Annexure-3, is referred to by the learned counsel for the petitioner and also the contents of the F.I.R. i.e. Annexure-1 to suggest that the involvement of the petitioner is entirely based on the confession of co-accused. It is claimed that the petitioner was not present at the spot whereas the accused persons were at the place of interception and apprehended but later on in course of enquiry they disclosed the name of the petitioner and hence, on such a disclosure and on the strength of confessional statements recorded, the petitioner's involvement is alleged. That apart, since other accused persons have been acquitted in Criminal Appeal No. 198 of 2012 and batch of cases and few others who faced trial independently also stood acquitted of the charges, no real purpose would be served to subject the petitioner to a full-fledged trial and therefore, the criminal proceeding which has been initiated and pending before the learned Special court should be quashed in exercise of inherent jurisdiction of the Court.

5. Mr. Praharaj learned counsel for the State on the other hand submits that the entire of the evidence is to be examined so as to find out the nature of involvement, if at all the petitioner is implicated on the basis of the confessional statement simplicitor. It is claimed that there is some material to indicate that the petitioner is involved in and dealing with contraband substance. It is claimed by Mr. Praharaj learned counsel for the State that the whole lot of evidence collected during investigation is to be gone through and therefore, the petitioner should be left to face the trial.

6. Learned counsel for the petitioner in response to the above submits that if the Court is not inclined to interfere with the criminal proceeding, the petitioner should at least be directed to surrender before the learned court below and released on bail as he is involved in an offence under Section 29 of the NDPS Act.

7. Considering the nature of allegations and the offence alleged vis-à-vis the petitioner notwithstanding acquittal of other accused persons vide a judgment of this Court as at Annexure-3, the Court is of the view that the petitioner may have been implicated on the strength of the confessional statements or otherwise which is to be freshly examined and since at present NBWA is pending execution against him, he should participate in the trial and defend himself against the charge under Section 29 of the NDPS Act. Having said so, the Court is of the view that though the other accused persons have been acquitted of the levelled charges, the petitioner should face the trial. In other words, the Court is of the view that it is not a case where inherent jurisdiction should be exercised to quash the criminal proceeding and all the questions which should have been raised before the learned court below should be left open for a decision during the trial by the learned Sessions Judge-cum-Special Judge, Ganjam-Gajapati at Berhampur.

8. Accordingly it is ordered.

9. In the result, CRLMC stands disposed of however with a direction to the petitioner to surrender before the learned court of Sessions Judge-cum-Special Judge, Ganjam-Gajapati at Berhampur in connection with T.R. Case No. 7 of 2009 corresponding to G.R. Case No. 02 of 2009(N) arising out of Jarada P.S. Case No. 100 of 2009 on or before 20th December, 2022 and in the event he surrenders

within the time stipulated, the court below shall release him on bail subject to conditions and the petitioner is also granted liberty to raise all the grounds and defend himself during trial which shall be considered as per and in accordance with law.

10. Urgent certified copy be issued as per rules.

(R.K. Pattanaik)
Judge



