

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.8792 of 2020

Rahul Pratap Singh

....

Petitioner

Mr.S.S. Mishra, Advocate

Mr. A.P. Bose, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. K.K. Gaya, ASC

BLAPL No.8832 of 2020

***Sunder Singh @ Sunder
Singh Nagar***

....

Petitioner

Mr. S.S. Mishra, Advocate

Mr. A.P. Bose, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. K.K. Gaya, ASC

CORAM: JUSTICE V. NARASINGH

ORDER

Date of hearing : 22.11.2022 / Date of judgment :25.11.2022

Order No.

15.

1. Since both the cases arise out of the same P.S. Case (Jeypore Sadar P.S. Case No.181 of 2020), they were heard together on the consent of the parties and are being disposed of by this common order.

2. The Petitioners are accused in T.R Case No.68 of 2020 pending on the file of learned Special Judge, Koraput, arising out of

Jeypore Sadar P.S. Case No.181 of 2020, for commission of offence under Sections 20(b)(ii)(C) of the N.D.P.S. Act and they are in custody since 15.09.2020.

3. Being aggrieved by the rejection of their application for bail U/s.439 Cr.P.C. by the learned Special Judge, Koraput-Jeypore by order dated 05.10.2020 in the aforementioned case, the present bail applications have been filed.

4. It is the case of the prosecution that on 15.09.2020, OIC, Aditya Mahakur of Jeypore Sadar P.S. got reliable information that contraband ganja is being loaded by some unknown peddlers in bushy jungle area near village Ambaguda Cold Store in a truck bearing registration number UP-15-CT-2848 and in a car bearing registration number DL-4-CAE-8617 and the said vehicles are likely to leave the spot within half an hour. Therefore, the O.I.C. reduced it into writing vide G.D. Entry No.09 and directed the S.I of Police of the said P.S to proceed to the spot to verify the authenticity of such information. The S.I of Police along with P.S. staff went to the spot at about 1.10 P.M and found the said vehicles are about to start and one blue colour Pulsar motorcycle bearing registration number OD-10-N-1219 was waiting there to escort both the aforesaid vehicles for which they immediately blocked the road and intercepted the said three vehicles.

4(A). And, on being asked the occupants of all three vehicles gave prevaricating statements. On suspicion, the S.I of police verified the said three vehicles and found some packets wrapped with brown colour cello tape kept inside the dalla of the truck and in the car covered with Tarpaulin, wherefrom acute smell of ganja was coming out. After following the procedure of search and

seizure as per the N.D.P.S. Act, the S.I of Police recovered all total 59 numbers of packets from the truck and 30 numbers of packets from the car and on opening of those packets found contraband ganja inside it. On weighment of the contraband ganja, in toto it came to 725 Kg. 700 grams.

4(B). As the accused Petitioners and co-accused Prafulla Khemundu @ Rahul failed to show any licence or authority for such unlawful possession and transportation of the contraband ganja in the truck and car, referred to hereinabove, involving more than the commercial quantity, the same were seized and the accused Petitioners were taken into custody.

5. It is on record that after investigation, final form has been submitted on 9.3.2021.

6. Heard Mr. S.S. Mishra along with Mr. A.P. Bose, learned counsel for the Petitioners and Mr. K.K. Gaya, learned Addl. Standing Counsel for the State.

7. Learned counsel for the Petitioners referring to the F.I.R, charge sheet and reports obtained under the R.T.I Act which are on record of the Sub-Divisional Officer, (Police), Balod, (Chhatisgarh) dated 18.09.2021 addressed to Superintendent of Police, District Balod (Chhatisgarh) and the report of the Superintendent of Police, Koraput dated 08.01.2022 along with the report of the Addl. S.P., Koraput dated 03.01.2022 submits with vehemence that ex facie it is a case of false implication and as such each day of continuance of the Petitioners in custody is illegal and they are to be released on bail forthwith notwithstanding commencement of trial.

8. Learned counsel for the State, Mr. Gaya refutes such submission and states that if report of the Sub-Divisional Officer

(Police), Balod, (Chhatisgarh) dated 18.09.2021 addressed to Superintendent of Police, District Balod (Chhatisgarh) and the report of the Superintendent of Police, Koraput dated 08.01.2022 along with the report of the Addl. S.P., Koraput dated 03.01.2022 are considered in its proper perspective, the allegation of false implication does not stand to reason. Hence, he seeks dismissal of the bail applications.

9. It is on record that on 13.09.2020, Gunderdehi S.H.O in Chhatisgarh received an information from Cyber Cell Dhamtari that one person who is an accused of N.D.P.S Case of Jeypore Sadar, District-Koraput is transporting ganja in the vehicle bearing number DL-04-CE-4617 and is reaching Gunderdehi from Dhamantri Gunderdehi road and the vehicle was fitted with a sticker (Monogram) of Government of India. It is stated that on the basis of the information so received the vehicle was caught and there was no intoxicant found in the vehicle and two persons who are seated in the said vehicle are Rahul Pratap Singh and Sunder Singh @ Sunder Singh Nagar, Petitioners in the case at hand.

10. It is stated that the Petitioners were taken into custody and along with vehicle handed over to Sub-Inspector Aaditya Mahakur and his companion staff and they left to Gunderdehi on 13.09.2020 at 22.45.

11. It is strenuously urged by the learned counsel for the Petitioners Sri Mishra, referring to the report of the Superintendent of Police, Koraput that there is no material on record that the present Petitioners were released from custody on 13.09.2020 and in fact it is stated that they have been planted as an accused in the

present F.I.R. (Jeypore Sadar P.S. Case No.181 of 2020 of Koraput district dated 15.09.2020).

12. On perusal of the inquiry report of the Addl. Superintendent Police., Koraput submitted to Superintendent Police., Koraput relating to detailed clarification of the physical enquiry at Gunderdehi Police Station, Chhatisgarh, it comes to the fore that S.I. Aditya Mahakur and his staff reached Gunderdehi on 13.09.2020 and as per the written requisition, Town Inspector (T.I), Gunderdehi P.S. Sri Rohit Malekar handed over the detained persons (Petitioners) to S.I Aditya Mahakur for verification and interrogation.

13. It is borne out from the said report that after thorough interrogation as no information could be collected from any of the Petitioners S.I. decided to leave the persons there instead of taking them to Jeypore. But after releasing them at Gunderdehi, S.I. Aditya Mahakur did not inform the local police about release of the detainees and returned back to Jeypore.

14. The Addl. S.P. in his report submitted to S.P., Koraput further observed that on inquiry S.I Aditya Mahakur stated that when he left for Gunderdehi on receiving information on 13.09.2020, he was out of P.S. premises. Hence, the receipt of such information could not be entered into the general diary. The Addl. S.P. has treated the same as “one type of unintentional omission on the part of the S.I. Mahakur”.

14(A). It is further revealed from the report of the Addl. S.P. that on 15.09.2020 at about 12.40 P.M. S.I. Aditya Mahakur, OIC Jeypore Sadar P.S. received reliable information regarding loading of contraband ganja by one truck bearing registration number

UP-15-CT-2848 and by one Innova vehicle bearing registration number DL-04-CAE-8617 in a bushy jungle area near village Ambaguda. Immediately S.I Mahakur entered the information in Jeypore Sadar P.S. G.D. vide entry No.09 dated 15.09.2020. He immediately sent a copy of GD to his superior SDPO, Jeypore. OIC Aditya Mahakur deputed a raiding party headed by S.I N.K. Toppo vide GD No.10 dated 15.09.2020. On the way S.I. N.K. Toppo arranged two independent witnesses namely Rabi Bagh and Nanda Harijan both are of village Umuri, P.S. Jeypore Sadar, Dist-Koraput. They reached at the spot and conducted search and seizure in presence of independent witnesses and Executive Magistrate Sri Nilambar Peyari ORS, the then Addl. Tahasildar Jeypore. S.I. Nabin Kumar Toppo carried out all the formalities as per the procedure of search and seizure envisaged under the N.D.P.S. Act. The detainees disclosed their names as Rahul Pratap Singh and Sundar Singh @ Sunder Singh Nagar. The contraband materials were seized and the detainees (Petitioners) were arrested.

15. On an analysis of such report, the S.P., Koraput agreed with the clarification by the Addl. S.P. that the Petitioners were not brought to Jeypore Sadar P.S. with S.I Aditya Mahakur and his staff on 13.09.2020 as alleged.

16. On close scrutiny of the reports of S.D.O., Chhatisgarh and S.P., Koraput, this Court is persuaded to hold that the allegation of false implication on account of the Petitioners being in custody/deemed custody from 13.09.2020, prior to occurrence in the case at hand (15.09.2020) and being planted as accused in the case at hand does not stand to reason and hence negated.

17. It is apt to note here that the present Petitioners have not alleged that they have been implicated falsely in the case at hand being brought from Gunderdehi either before the Executive Magistrate or before the independent witnesses at any time when the contraband ganja were recovered from their possession.

18. It is apt to note that the Petitioners have filed an application under Section 482 Cr.P.C which is registered as CRLMC No.2001 of 2021 for quashing the proceeding, which is pending adjudication.

19. It is needless to say that the same shall be considered on its own merit without being influenced by any observation which has been made herein.

20. Learned counsel for the Petitioners Sri Mishra has also relied on the property description on 25.08.2020 and 20.08.2020 at Jeypore Sadar P.S. Case No.151 dated 20.08.2020 in the final form to state that such seizure has nothing to do with the present Petitioners and as such indicates that in their anxiety to implicate the Petitioners the investigating agency has referred to materials which are completely unconnected.

21. On perusal of the final form it can be seen that as rightly pointed out under column no.10 relating to details of property reference has been made to Jaypore Sadar P.S. and G.D. No.9 dated 20.08.2020 but **it is also worth noting that relating to case at hand i.e. Jeypore Sadar P.S. Case No.181 dated 15.09.2020 the seizure has been reflected in serial nos.2 to 7 under the said column no.10** and it is pertinent to state here that the S.I. Shankar Panda is stated to be the I.O in respect of Jeypore Sadar P.S. Case

No. G.D. No.09 dated 20.08.2020 as well as in the case at hand. Merely because a wrong case number has been reflected in the seizure list it cannot be a ground to discard the final form more so when it is stated at the Bar that trial has commenced and any further forensic examination of the final form would amount to pre-judging the issue pending trial, against the settled position of law.

22. It is pointed out by learned counsel for the State that the bail application of the co-accused Prafulla Khemundi @ Rahul from whose possession there was no recovery and the allegation is one of escorting the vehicles of the Petitioners containing the contraband has been rejected by this Court by order dated 31.01.2021 in BLAPL No.7662 of 2020, the present bail applications of the Petitioners with greater complicity does not merit consideration.

23. It is to be noted that in the case of said co-accused Prafulla Khemundi @ Rahul, question of false implication as in the present case was not urged.

24. Hence, rejection of the bail application of the co-accused cannot stand as a bar, as rightly stated by the learned counsel for the Petitioners, to consider the bail application of the Petitioners independently.

25. Section 37 of the NDPS Act reads as follows:

“[37. Offences to be cognizable and non-bailable.-(1) Notwithstanding anything contained in the Code of Criminal Procedure Code, 1973 (2 of 1974) -

- (a) every offence punishable under this Act shall be cognizable;
- (b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless -

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Criminal Procedure Code, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]

26. On a bare perusal of the non-obstante clause inserted in sub-section (1) and additional “limitations” stipulated in sub-section (2) of Section 37 outline the contours of the Court while considering bail application of one accused of having committed an offence under the NDPS Act.

26(A). Not only are the limitations imposed under Section 439 of the Criminal Procedure Code, 1973 are to be borne in mind, the restrictions placed under clause (b) of sub-section (1) of Section 37 have to be weighed and given its full play. The conditions imposed in subsection (1) of Section 37 is that (i) the Public Prosecutor ought to be given an opportunity to oppose the application moved by an accused person for release and (ii) if such an application is opposed, then the Court must be satisfied that there are reasonable grounds for believing that the person accused is not guilty of such an offence. Additionally, the Court must be satisfied that the accused person is unlikely to commit any offence while on bail.

(Emphasized)

27. In **Collector of Customs, New Delhi v. Ahmadalieva Nodira** reported in **(2004) 3 SCC 549**, decision rendered by a Three Judges Bench of the apex Court, it has been held thus:—

“7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are : the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. **The conditions are cumulative and not alternative.** The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. **The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.**”

[Emphasis added]

28. The expression “reasonable ground” came up for discussion in **State of Kerala and others v. Rajesh and others** reported in **(2020) 12 SCC 122** and the apex Court observed :

“20. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. **The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.** In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.”

[As emphasized)

29. The apex Court in **Narcotics Control Bureau vrs. Mohit Aggarwal** reported in **2022 SCC Online SC 891** while interpreting the meaning of “reasonable grounds” held as under:

“14. To sum up, the expression “reasonable grounds” used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail.”

(Emphasized)

30. On evaluation of the materials on record carefully and taking into account the rigors of Section 37 of the N.D.P.S. Act and the law governing the field as settled by the apex Court in the cases of **Ahmadaliev Nodira** (supra) and **Rajesh** (supra) and **Mohit Aggarwal** (supra) and being alive to the onus cast on the Court while considering the application for bail under the Special Act, this Court is persuaded to hold that the Petitioners do not satisfy the twin conditions as envisaged under Section 37 of the N.D.P.S. Act

for favourable consideration of their bail applications and the contention relating to false implication has already been rejected for the reasons stated.

31. Hence, on a conspectus of the materials on record, this Court does not find any merit in their bail applications and the same stand rejected.

32. It is apt to state that observations made herein are for the limited purpose of considering the bail applications of the Petitioners and shall not be construed as expressing any opinion regarding their contention of false implication and consequential complicity being the subject-matter of CRLMC pending before this Court and the merits of the stand of the parties before the learned Trial Court.

(V. NARASINGH)
Judge

Orissa High Court, Cuttack
Dated the 25th November, 2022/ Pradeep