

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.9876 of 2021

Trinatha Mohapatra

....

Petitioner

Mr. Punil Kumar Swain,
Advocate

-versus-

State of Odisha

....

Opposite Party

Mr.P.Tripathy,
Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER

21.01.2022.

Order No.

01. 1. This matter is taken up through virtual mode.
2. Heard Mr. Punil Kumar Swain, learned counsel for the Petitioner and Mr. P.Tripathy, learned Addl. Standing Counsel for the State.
3. The petitioner is in custody since 15th November, 2020 in connection with Khurda Model P.S. Case No.406/2020 corresponding to T.R. Case No.53/2020 pending in the court of learned 1st Addl. Sessions Judge-cum-Special Judge, under NDPS Act, Khurda for the alleged commission of the offence under Section 21(b) of the NDPS Act.

4. The allegation is that the Petitioner was found to be possessing brown sugar weighing 22.3 grams. Earlier he had filed a bail application being BLAPL No.8464/2020 before this Court, which came to be rejected vide order dated 25th June, 2021. It is submitted by the Petitioner with reference to the order sheet of the case enclosed to the bail application that since then the trial of the case has not commenced even though the Petitioner is in custody since more than a year and the quantity of contraband involved is less than commercial quantity. Citing the above change in circumstances, it is submitted that the Petitioner should be released on bail as the prosecution has not taken any steps for early commencement and conclusion of the trial.

5. Learned Addl. Standing Counsel for the State, on the other hand, has opposed the prayer for bail by submitting that the delay in commencement of trial cannot be treated as change in circumstance so as to warrant a different view being taken.

6. A perusal of the order sheet, which is enclosed to the bail application reveals that the case has been adjourned from time to time on the ground of non-availability of prosecution witnesses. It is not forthcoming as to what is the reason for non-availability of the witnesses. Obviously, a person cannot be detained in custody indefinitely for the default of the prosecution.

7. Considering the above facts, the period of detention already undergone and the fact that the quantity of contraband seized is less than commercial quantity and there being no indication of commencement and conclusion of the trial in the near future, I am inclined to allow the prayer for bail.

8. Let the Petitioner- Trinatha Mohapatra be released on bail in the aforesaid case on such terms and conditions as may be imposed by the court in seisin over the matter including the condition that he shall appear before the trial court on each date of posting of the case without fail.

9. The BLAPL is disposed of.

10. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High court's website, at par with certified copy, subject to attestation by the concerned Advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020, modified by Notice No.4798, dated 15th April, 2021 and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

AKB

(Sashikanta Mishra)
Judge

