

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.9909 of 2021

Nirakara Behera

....

Petitioner

Mr. Sitikant Mishra, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. Karunakar Das, ASC

CORAM: JUSTICE S.K. PANIGRAHI

ORDER

16.02.2022

Order No.

01. 1. The matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned counsel for the State.
3. This is an application under Section 439 of the Cr.P.C. for bail.
4. The petitioner is an accused in C.T. Case No.50 of 2020, arising out of Gochhapada P.S. Case No.54 of 2020 of the court of learned Sessions Judge-cum-Special Judge, Phulbani for commission of offence under Sections 20(b)(ii)(C) and 29 of the N.D.P.S. Act.
5. The prosecution case is that on 14.09.2020 at about 10 A.M. on getting information about illegal transportation of 'ganja' by a Bolero vehicle bearing Regd. No.OD-05B-1112, the informant along with his staff proceeded to the Belapadar Chhak and at about 12.30 P.M. intercepted the aforesaid numbered vehicle which was coming from Belapadar side. In that vehicle there were two occupants including the driver. On seeing the Police, the driver could manage to flee towards nearby jungle and another occupant was arrested. On

search, 51 Kg 500 grams ‘ganja’ contained in two bags was seized from the exclusive possession of the present petitioner. Thereafter, he was forwarded to the Court.

6. Learned counsel for the petitioner submits that in the meantime, co-accused has been released on bail by this Court vide order dated 16.03.2021 in BLAPL No.8006 of 2020. The petitioner is in judicial custody since 15.09.2020. The trial has not yet been commenced. Therefore, the bail application may be allowed.

7. Learned counsel for the State vehemently opposes the bail of the petitioner.

8. The petitioner has already spent in custody for about more than one year and trial has not yet been commenced. The Hon’ble Apex Court, time and again, has expressed displeasure on the delay of trial of the undertrial 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 offence is a desirable goal because long delay can defeat justice. There is a common proverb – ‘delay defeats justice. Hence, it is said that speedy justice is the essence of an organized society and the cases should be decided as early as possible. The present

¹ (1980) 1 SCC 81

case fails to confirm to the aforesaid stand as articulated by the Hon'ble Apex Court.

9. Keeping in view the aforesaid consideration, facts of the case, period of detention of the petitioner in judicial custody without trial having been commenced and the bleak chance of the completion of trial in the nature future, the BLAPL is allowed.

10. Let the petitioner be released on bail in the aforesaid case on such terms and conditions as deemed just and proper by the court in seisin over the matter with further conditions that:-

10.i. petitioner shall appear before the court on each date of posting of the case;

10.ii. he shall not indulge in any kind of criminal activity during bail period; and

10.iii. he shall not tamper with the evidence of prosecution witnesses in any manner.

11. Violation of any of the conditions shall entail cancellation of bail.

12. The BLAPL is disposed of.

13. Urgent certified copy of this order be granted as per rules.

(S.K. Panigrahi)
Judge

pcd