

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.10153 of 2021

PaikaSahu& Another

....

Petitioners

Mr.S.Mohanty, Advocate

-versus-

State of Odisha

.... ***Opposite Party***

Mr.M.K.Mohanty,ASC

CORAM:

JUSTICE S.K. PANIGRAHI

Order

No.

03.

ORDER

07.01.2022

1. This matter is taken up by hybrid mode.
2. Heard, learned counsel for the petitioners and learned counsel for the State.
3. The petitioners being in custody in connection with 2 (a) CC Case No.09 of 2020 arising out of excise P.R. No.7 of 2020 pending in the Court of learned District & Sessions Judge-cum-Special Judge, Phulbani, for commission of offence under Sections 20(b)(ii)(C) of the NDPS Act has filed this application under Section 439 of the Cr.P.C. for their release on bail.
4. The prosecution case in brief is that on 24.12.2020 at about 5.45 A.M. while the informant along with his other Excise staffs were performing patrolling duty, they got reliable information that two persons were waiting for bus at Kalipanga Chhaka having a bag containing contraband 'ganja'. They proceeded to the spot and caught hold of them on suspicion and recovered a jari bag from their possession containing 21 Kgs. 725 grams of 'ganja'.
5. Learned counsel for the petitioners submits that since there was poor transportation facilities, the petitioners were waiting for a vehicle to reach at their destination. Meanwhile, the Police

personnel caught them suspecting to have possessed the contraband articles though there was nothing found from their conscious possession. Moreover, the petitioners have been languishing in custody since 24.12.2020 which is more than one year.

6. The Petitioners have already spent in custody for about more than one year without trial being commenced. 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 has 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*”. Certain provisions of the Cr.P.C. also 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 is said that speedy justice is the essence of an organised society and so, cases should be decided as early as possible. The present case fails to confirm to the aforesaid stand as articulated by the Hon'ble Supreme Court.

7. Learned counsel for the State though vehemently opposes the prayer for bail of the petitioners on the ground commercial quantity but concedes the detention of the petitioner for more than one year.

¹ (1980) 1 SCC 81

8. Considering the submissions made, facts and circumstances of the case as well as period of detention of the petitioners in custody without trial, it is directed that the petitioners 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 petitioners shall appear before the learned trial court on each date of posting of the case;
- ii. they shall not indulge themselves in any criminal offence while on bail and
- iii they 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.

(S.K.Panigrahi)

Judge