

IN THE HIGH COURT OF ORISSA AT CUTTACK
BLAPL No. 10590 of 2021

Subal Baral

....

Petitioner

Mr. Devashis Panda, Sr. Adv.

-versus-

State of Odisha & Anr.

....

Opp. Party

*Mr. G.R. Mohapatra,
ASC*

CORAM:
DR. JUSTICE S.K. PANIGRAHI

ORDER
27.07.2022

Order
No.

14. 1. This matter is taken up through hybrid mode.
2. The petitioner being in custody in connection with Chitrakonda P.S. Case No. 73 of 2021 corresponding to G.R. Case No. 56 of 2021, pending in the court of learned Sessions Judge-cum-Special Judge, Malkangiri, registered for the alleged commission of offence under Sections 20(b)(ii)(i) of the NDPS Act.
3. The allegation of the prosecution is that on 11.06.2021 while the police team was conducting patrolling duty, on getting reliable information, detained an Auto bearing Regd. No. OD-30A-0253 at Rajabandh Chhak and after obtaining formalities,

they seized 310 kg. 500 grms of Ganja kept in 12 numbers of jari bags wherein the petitioner was an occupant of the said Auto.

4. Learned counsel for the Petitioner submits that the petitioner has falsely implicated in this case. He was having no knowledge about the Ganja kept in that alleged Auto and though he explained the facts to the raiding team they did not paid any attention to his version. Moreover, the petitioner has been languishing in custody since 11.06.2021.

5. Learned counsel for the State vehemently opposes the prayer for bail.

6. Section 20(b) of the NDPS Act makes possession of contraband articles an offence. Section 20 appears in chapter IV of the Act which relates to offence for possession of such articles. It is submitted that in order to make the possession illicit, there must be a conscious possession. It is highlighted that unless the possession was coupled with requisite mental element, i.e. conscious possession and not mere custody without awareness of the nature of such possession, Section 20 is not attracted.

7. Hon'ble Supreme Court in the case of **Avtar Singh and others vs. State of Punjab**¹, held that:

"The word "possession" no doubt has different shades of meaning and it is quite elastic in its connotation. Possession and ownership need not always go together but the minimum requisite element which has to be satisfied is custody or control over the goods. Can it be said, on the basis of the evidence available on record, that the three appellants—one of whom was driving the vehicle and the other two sitting on the bags, were having such custody or control? It is difficult to reach such conclusion beyond reasonable doubt. It transpires from the evidence that the appellants were not the only occupants of the vehicle. One of the persons who was sitting in the cabin and another person sitting at the back of the truck made themselves scarce after seeing the police and the prosecution could not establish their identity. It is quite probable that one of them could be the custodian of the goods whether or not he was the proprietor. The persons who were merely sitting on the bags, in the absence of proof of anything more, cannot be presumed to be in possession of the goods."

8. Another decision on which reliance is placed is the decision of Hon'ble Supreme Court in the case of **Sorabkhan Gandhkhan Pathan and another vs. State of Gujarat**¹, wherein it has been held as follows:

"7. However, we notice that so far as Accused 1, Appellant 1 herein is concerned,

¹ 2004 (13) SCC 608

the contraband in question has been seized from his possession and, in our opinion, the prosecution has established the case against the said accused and the courts below have rightly convicted the said appellant. Whereas in regard to Appellant 2, it is the prosecution case itself that he was travelling in the auto rickshaw, along with three other persons. The prosecution has not produced any material whatsoever to establish that either this appellant had the knowledge that Appellant 1 was carrying the contraband or was, in any manner, conniving with the said accused in carrying the contraband. In the absence of any such material, to convict the second appellant only on the ground that he was found in the auto rickshaw, in our opinion, is not justified. As a matter of fact, the courts below have rightly acquitted the other two accused on similar ground and, in our opinion, the said benefit ought to have gone to Accused 2 also. For the reasons stated, we find the prosecution has failed to establish its case against Appellant 2. Therefore, this appeal, so far as he is concerned, succeeds and the same is allowed. The said Appellant 2, if in custody, shall be released forthwith, if not wanted in any other case. However, the appeal of the first appellant is dismissed."

9. Hon'ble Supreme Court has held that right to have speedy trial is a fundamental right of a citizen. Hence, keeping a person in custody for such a long time without any trial is not justified and violative of

his fundamental right. The importance of speedy trial has been emphasized in the case of **Hussainara Khatoon & Ors vs Home Secretary, State of Bihar**², wherein the Hon'ble Supreme Court has iterated that:

"Speedy trial is, as held by us in our earlier judgment dated 26th February, 1979, an essential ingredient of 'reasonable, fair and just' procedure guaranteed by Article 21 and it is the constitutional obligation of the State to devise such a procedure as would ensure speedy trial to the accused. The State cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speedy trial." संयमिक न्याये

10. Considering the submissions made, facts and circumstances, perusal of the case record, the Petitioner makes out a fit case for grant of bail and it is directed that the Petitioner be released on bail with some stringent terms and conditions as deemed just and proper by the court in seisin over the matter in the aforesaid case with further conditions that:-

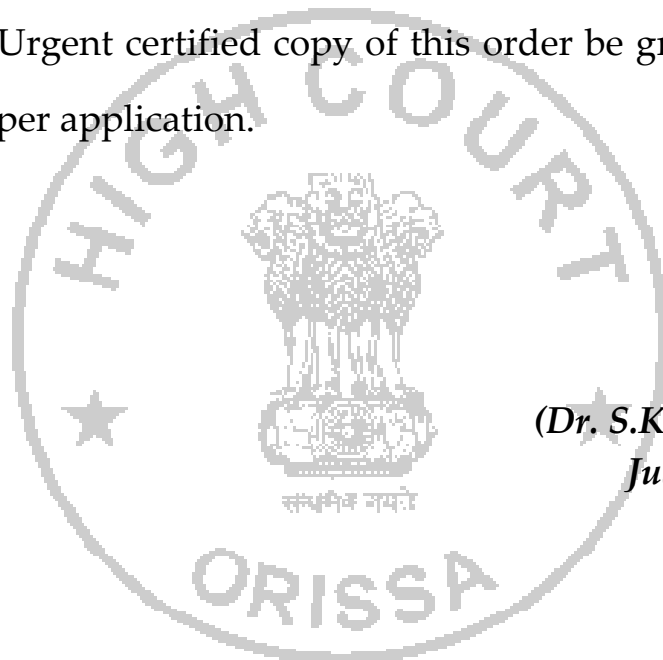
² 1979 AIR 1369.

- i. the Petitioner shall appear before the learned trial court on each date of posting of the case;
- ii. he shall not indulge in similar activities in future; and
- iii. he shall not tamper the evidence of the prosecution witnesses in any manner.

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

12. The BLAPL is, accordingly, disposed of.

13. Urgent certified copy of this order be granted on proper application.



(Dr. S.K. Panigrahi)
Judge

SD