

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPCRL No. 164 of 2022

Madhab Prasad Mohanty

.....

Petitioner

Mr. M.K. Mohanty, Adv.

Vs.

State of Odisha & Others

.....

Opposite Parties

Mr. D. Nayak, A.G.A.

Mr. B. Bhuyan, Adv.

(Special Counsel for O.P.I.D.)

CORAM:

**JUSTICE S.TALAPATRA
JUSTICE SAVITRI RATHO**

ORDER

20.12.2022

Order No.

05.

1. This matter is taken up through hybrid mode.
2. Heard Mr. M.K. Mohanty, learned counsel appearing for the petitioner and also Mr. D. Nayak, learned Additional Government Advocate appearing for the State.
3. As deduced from the records, the petitioner had been arrested in connection with G.R. Case No. 821 of 2010 under Sections 120-B/467/468/471/420/406/34 of the I.P.C. read with Sections 4/5/6 of the PCMCS Act and Section 6 of the O.P.I.D. Act pending in the Court of the Designated Court under O.P.I.D. Act, Berhampur, Ganjam. After the arrest, the petitioner was produced before the Court of the Executive Magistrate, Khordha and he was remanded to the jail custody till 30.09.2022.

4. His bail application as moved in the Court of the 1st Additional Sessions Judge, Khordha in BLAPL No. 532 of 2022 was rejected vide order dated 27.09.2022. It has been observed by the 1st Additional Sessions Judge, Khordha that the petitioner had been trying to avoid the trial and for that reason, the N.B.W. of arrest was issued for ensuring his production in the trial. But, by the order dated 04.11.2022 passed in BLAPL No. 9664 of 2022, this Court accorded the interim bail and the petitioner, at present, by virtue of the said order, is enlarged. The period of the said interim order is limited.

5. It has been stated by Mr. Mohanty, learned counsel that the said application being BLAPL No. 9664 of 2022 in which the interim order of bail was passed on 04.11.2022, is pending in this Court. That apart, Mr. Mohanty, learned counsel has submitted that the petitioner has applied for pre-arrest bail under Section 438 of the Cr.P.C. in connection with G.R. Case No. 821/2016 (A) as the concerned Court has issued N.B.W. of arrest against the petitioner along with others.

6. Mr. D. Nayak, learned Additional Government Advocate appearing for the State has fairly submitted that there is no case against the petitioner being G.R. Case No. 821 of 2010, but by mistake the petitioner had been shown arrested against the said case.

That was a mere mistake and caused by inadvertence. Arrest was actually made in G.R. Case No. 821 of 2016(A). Hence, there is no question of illegal detention. Presently, the petitioner is trying to obtain pre-arrest bail in connection with the said case. The aforementioned interim bail has been allowed by this Court in respect of the G.R. Case No.821 of 2010 which, according to Mr. Nayak is not the case which concerns the petitioner.

7. In these circumstances, we have no hesitation to hold that the records are very scanty to infer that the petitioner was arrested in connection with G.R. Case No. 821 of 2016(A). The petitioner had been arrested in connection with G.R. Case No. 821 of 2010 and that is apparent from the record. The said detention or arrest is per se illegal and the petitioner deserved to be released from the custody. Notwithstanding pendency of two bail applications, one for regular bail and the other for pre-arrest bail, we direct that the petitioner shall not be arrested by the police at present, subject to the condition that the petitioner shall surrender in the Court of the Presiding Officer, Designated Court under O.P.I.D. Act, Berhampur, Ganjam which Court has issued the N.B.W. of arrest against the petitioner in connection with G.R. Case No. 821 of 2016(A) within a period of six weeks from today. The petitioner may make reference of this

order to the concerned Bench of this Court, so that those pending applications may be disposed of.

8. In terms of the above, this petition stands disposed of.

9. Free copy of this order be supplied to Mr. D. Nayak, learned Addl. Govt. Advocate appearing for the State.

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

(S.Talapatra)
Judge

(Savitri Ratho)
Judge

Sukanta

