IN THE HIGH COURT OF ORISSA AT CUTTACK BLAPL No. 7917 of 2020

Petitioners

Srinibas Narasaiha & Others

Mr. R.L. Pattnaik, Adv.

-Versus -

State of Odisha Opposite Party

Mr. M.K. Mohanty, Addl. Standing Counsel

CORAM: JUSTICE SASHIKANTA MISHRA

ORDER 07.12.2021

Order No. 9.

- 1. This matter is taken up through hybrid mode.
- 2. In this application filed under Section 439 Cr.P.C. the petitioners pray for direction to release them on bail in connection with Kalimela P.S. Case No. 24 of 2020 corresponding to T.R. Case No. 30 of 2020 pending in the file of District & Sessions Judge-cum- Special Judge, Malangiri.
- 3. The facts of the case are that on 18.09.2020 at about 01.30 A.M., near village Pulimetal while the personnel were performing patrolling duty, they stopped one motor cycle bearing Registration No. OR-30-5231, which was coming from Gumuka side. In the meanwhile, a Hyundai Verna car bearing Registration No.MH-CP-5760 also reached the spot. On search

of the car, the police party found 21 KG and 900 grams of contraband ganja from the said car. Accordingly, the ganja was seized and FIR was drawn up vide Kalimela P.S. Case No. 116 dated 18.09.2020. In course of investigation, the accused persons, including the present petitioners were arrested on 18.09.2020 and forwarded to the court of learned Special Judge and on the same day they were remanded to judicial custody. In course of investigation, on a petition filed by the I.O. on 15.03.2021, the Special Public Prosecutor filed a petition with prayer for extension of time to submit Charge sheet. The said petition was heard by the learned Special Judge on 16.03.2021 and was allowed by extending time to submit Charge Sheet by 30 days beyond the stipulated period of 180 days.

- 4. Heard Mr. R.L. Pattnaik, learned counsel for the petitioners and Mr. P. Tripathy, leaned Addl. Standing Counsel for the State.
- 5. It is submitted by Mr. Pattnaik that the petitioners having been forwarded and remanded to custody on 18.09.2020 the stipulated period of 180 days expired on 17.03.2021. On 16.03.2021 the petition was allowed without granting opportunity to the petitioners to have their say in the matter. Further, the ground on which the petition for extension was allowed, is contrary to law inasmuch as engagement of a Police Officer in Covid-19 duty cannot be a ground for extension of period of investigation as held by the apex Court *S. Kasi vs.*

State though the Inspector of Police Samaynallur Police Station Madurai District, reported in 2020 SCC OnLine SC 529.

- 6. Per contra Mr. Priyabrata Tripathy has contended that the petitioners were duly produced before the court on 16.03.2021, through virtual mode on which date, the petition allowing extension of time to submit Charge Sheet was allowed after hearing the objections raised by the defence counsel. It is further argued that the I.O. had not sought for extension of time on the ground of Covid-19 duty but citing other reasons, which are genuine and bonafide and absolutely essential for an effective investigation into the matter.
- 7. A perusal of the certified copies of the order sheet of the case reveals that the present petitioners were in fact forwarded to the court of learned Special Judge on 18.09.2020. It is further seen that on the date of passing of the order granting extension of time, the accused-petitioners were produced from jail custody on virtual mode and the defence counsel being present had also put forth his objection to the petition for extension. Therefore, it cannot be accepted that the accused persons were not heard or given opportunity to oppose the prayer for extension. As regards the grounds that the time prescribed under Section 167 (2) of Cr.P.C. cannot be extended on the ground of Covid-19 pandemic, the Hon'ble Supreme Court in the above noted case in paragraph-26 have held as under:

"26. We, thus, are of the view that neither this Court in its order dated 23.03.2020 can be held to have eclipsed the time prescribed under Section 167(2) of Cr.P.C. nor the restrictions which have been imposed during the lockdown announced by the Government shall operate as any restriction on the rights of an accused as protected by Section 167(2) regarding his indefeasible right to get a default bail on non-submission of charge sheet within the time prescribed. The learned Single Judge committed serious error in reading such restriction in the order of this Court dated 23.03.2020.."

8. Examination of the facts of the case would reveal that the date of first remand being 19.09.2020, the 180-day period was due to expire on 18.03.2021, after excluding the date of remand. The petition for extension was admittedly filed on 15.03.2020, which is well within the stipulated period. As observed in the order dated 16.03.2021, the I.O. sought for extension on the ground that the financial investigation, examination of the owner of the seized vehicle has not yet been done.

Thus, there is no whisper of investigation not being able to be concluded on the ground of Covid-19 duty. Surprisingly, however, the Special P.P. in his petition filed on 25.03.2021 stated on his own that investigation could not be completed due to engagement of the I.O. in the lockdown/shutdown process of Covid-19. However, he also mentioned that owner of the involved vehicle is to be examined other involved is to be arrested. Obviously, the petition filed by the Special P.O. does not correctly reflect the reasons cited by the I.O. seeking extension. Be that as it may, fact remains that the Investigating

Officer had cited certain reasons other than Covid-19 Pandemic to grant extension. Learned court below in its order dated 16.03.2021 has referred to reasons cited by the I.O. and in addition also the reasons cited by the Special P.P. and having regard to the facts and circumstances as a whole, allowed the petition.

- 9. This is therefore, not a case where the time for extension was sought for citing the ground of Covid-19 even though the Special P.O. appears to have mentioned the same on his own and therefore, the judgment of the Apex Court will not be applicable to the facts of the cases.
- 10. For the forgoing discussion therefore, this Court finds that the petition for extension was filed within the stipulated period citing genuine grounds and the same was heard and allowed after affording due opportunity of hearing to the accused persons. Therefore, no illegality can be said to have been committed by learned court below thereby warranting interference by this court.
- 11. In the result, this court finds no merit in the BLAPL, which is therefore, dismissed.

(Sashikanta Mishra) Judge