

## **Babua @ Tazmul Hossain vs The State Of Orissa on 30 January, 2001**

**Equivalent citations: AIR 2001 SUPREME COURT 1052, 2001 (2) SCC 566, 2001 AIR SCW 682, 2001 CRILR(SC MAH GUJ) 195, 2001 (1) UJ (SC) 747, (2001) 2 JT 552 (SC), 2001 CRILR(SC&MP) 195, 2001 (2) JT 552, 2001 (3) SRJ 208, 2001 UJ(SC) 1 747, 2001 (2) LRI 228, 2001 ALL MR(CRI) 990, 2001 (1) SCALE 429, 2001 CALCRILR 169, 2001 SCC(CRI) 351, (2001) 1 SCALE 429, (2001) 1 ALLCRILR 472, (2001) 1 EFR 494, (2001) 1 UC 386, (2001) SC CR R 437, (2001) 1 EASTCRIC 197, (2001) 2 GUJ LH 715, (2001) 20 OCR 600, (2001) 2 RAJ LW 288, (2001) 1 RECCRIR 720, (2001) 1 SCJ 527, (2001) 1 CURCRIR 184, (2001) 1 SUPREME 411, (2001) 1 ALLCRIR 713, (2001) 42 ALLCRIC 561, (2001) 2 BLJ 279, (2001) 1 CHANDCRIC 166, (2001) 1 CRIMES 215, (2001) 92 CUT LT 192, 2001 (1) ANDHLT(CRI) 157 SC**

**Bench: S. Rajendra Babu, K.G. Balakrishnan**

CASE NO.:

Special Leave Petition (crl.) 2866 of 2000

PETITIONER:

BABUA @ TAZMUL HOSSAIN

Vs.

RESPONDENT:

THE STATE OF ORISSA

DATE OF JUDGMENT: 30/01/2001

BENCH:

S. Rajendra Babu & K.G. Balakrishnan.

JUDGMENT:

**J U D G M E N T** RAJENDRA BABU, J. :

L...I...T.....T.....T.....T.....T.....T.....T...J The petitioner before us has been charged that on or about 27.07.1998 at Kilapokhari of Balasore Town abetted the commission of the offence by (i) Azad Parvez, (ii) Batu @ Jahid Parvej and (iii)

Allauddin Saha @ Sk. Allauddin or was party with them to a criminal conspiracy to commit an offence of possessing and/or sale cannabis ganja and manufactured drugs punishable under Chapter IV of the Narcotic Drugs and Psychotropic Substances Act, 1985 [hereinafter referred to as the Act] and thereby committed an offence punishable under Section 20(b) and Section 21 read with Section 29 of the Act within the cognizance of the Special Judge at Balasore.

The gist of the case is that a Special Case No.. 63 of 1998 was filed in which one Md. Diwan was apprehended by Subrat Kumar Behera, SI of Police and from his possession, as is alleged, 500 gms of ganja was seized for which this Special Case No. 63 of 1998 was instituted and the trial therein was going on in the Court of Special Judge, Balasore. It is alleged that Md. Diwan disclosed before the arresting authority that he works for Azad Parvez who does the business of contraband articles and he knows the place where Azad Parvez had kept all the contraband articles. On the basis of this report, house of Azad Parvez was searched and the contraband articles were also seized. A separate FIR having been lodged on 27.7.1998 another case was registered pursuant to which Special Case No. 64 of 1998 was lodged before the Special Judge, Balasore. Subrat Kumar Behera, SI of Police recorded a statement four months after the institution of Special Case No. 63 of 1998 on 23.11.1998 that Md. Diwan stated that the petitioner in this case is also working for Azad Parvez. On recording such statement the petitioner was also implicated in the case and was arrested and is facing the trial, as stated earlier. There are 10 accused persons in the case, but only 6 accused persons are arrested and 4 are stated to be absconding. In these circumstances, the Special Judge, Balasore, pursuant to an order made on 24.3.1999, splitted the case into two cases as Special Case No. 64 of 1998 and 64A of 1998. On 30.3.1999 charges were framed against the six accused persons, including the petitioner for having committed offence under Section 20(b) and Section 21 read with Section 29 of the Act and, since four other accused persons were absconding, the charges could not be framed against them. Bail application filed by the petitioner on several grounds stood rejected by orders dated 8.9.1999 and 15.1.2000. The Orissa High Court suo motu took cognizance of the case on the basis of a news report and by an order made on 30.7.1999 set aside the order of the Special Judge, Balasore made on 24.3.1999 splitting the case into two cases. It is also brought to the notice of the court that Azad Parvez is facing trial in TR 8 of 1998 before the IIIrd Additional District Judge, Howrah and was lodged in the Howrah jail. The Special Judge, Balasore requested the IIIrd Additional District Judge, Howrah to make available the accused Azad Parvez to Balasore for purposes of trial in the present case. However, the IIIrd Additional District Judge, Howrah declined to do so on account of difficulty in securing him back in his court. The said Azad Parvez is also facing another trial in the Special Court at Alipore in Special Case No. 4/NCB/Cal/99 and in Special Court at Berhampore, Murshidabad in GR Case No. 485 dated 16.6.1989.

Out of 10 accused persons only nine accused persons are in custody and, one accused person Rokia Sultana is still absconding. Nine witnesses have been examined in this case and it is claimed that

none of the witnesses have implicated the petitioner as an accomplice of Azad Parvez and all that PW 5 said is that he had seen Azad Parvez visiting the house of the petitioner and it is claimed that no other witness has so far implicated the present petitioner in any manner.

In view of Section 37(1)(b) of the Act unless there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail alone will entitle him to a bail. In the present case, the petitioner attempted to secure bail on various grounds but failed. But those reasons would be insignificant if we bear in mind the scope of Section 37(1)(b) of the Act. At this stage of the case all that could be seen is whether the statements made on behalf of the prosecution witnesses, if believable, would result in conviction of the petitioner or not. At this juncture, we cannot say that the accused is not guilty of the offence if the allegations made in the charge are established. Nor can we say that the evidence having not been completely adduced before the Court that there are no grounds to hold that he is not guilty of such offence. The other aspect to be borne in mind is that the liberty of a citizen has got to be balanced with the interest of the society. In cases where narcotic drugs and psychotropic substances are involved, the accused would indulge in activities which are lethal to the society. Therefore, it would certainly be in the interest of the society to keep such persons behind bars during the pendency of the proceedings before the Court, and the validity of Section 37(1)(b) having been upheld, we cannot take any other view.

However, attempts should be made by the State Governments of Orissa and West Bengal to see that the trial in the cases pending before them are facilitated by making appropriate arrangement to have all the accused persons in one place for purposes of trial and details should be worked out and shall be examined by the High Court of Orissa and the High Court of Calcutta on the administrative side and appropriate directions be given in that regard to enable expeditious disposal of the case. In this case, it is, therefore, not proper for us to enter upon the merits of the case so far as the splitting of the charges are concerned or refusal of the IIIrd Additional District Judge, Howrah in not releasing the main accused to enable the trial to go on at Balasore. Copies of this order shall be sent to the Chief Secretary to the Government of West Bengal, Chief Secretary to the Government of Orissa, Registrar of the High Court of Calcutta and Registrar of the High Court of Orissa for compliance with directions.

Subject to the observations made above, this petition stands dismissed.