

Gopal Gupta vs Rajesh on 4 June, 2021

AFR

BLAPL No.7236 of 2020

5 of 2019

Gopal Gupta	Petitioner
	-Vrs.-	
State of Odisha	Opp. Party
For Petitioner	:	Mr. B.K. Sharma, Advocate
For State	:	Mr. G.N. Rout, Addl. Standing Counsel

07. 04.06.2021

I have heard Mr. Bigyan Kumar Sharma, learned counsel for the petitioner and Mr. G.N Rout, learned Additional Standing Counsel for the through Video Conferencing mode.

This is an application under Section 439 of Cr.P.C. for grant of bail to the petitioner-Gopal Gupta in connection with Tangi P.S. Case No.12 of corresponding to G.R. Case No. 168 of 2020 pending in the Court of the learned J.M.F.C.(R), Cuttack, registered for commission of offences under Sections 420/467/448 /471/34 of I.P.C and Section 103 and 104 of Trade Mark Act, 1999. Preliminary chargesheet dated 20.05.2020 has been submitted against the petitioner and his father Om Prakash Gupta for commission of offences punishable under Sec- 420/467/468/471/272/273/34 I.P.C keeping investigation open as verification reports from concerned Department is awaited and more clues are to be obtained.

This is the second journey of the petitioner to this Court. He had earlier filed BLAPL No.1664 of 2020 before this Court. In I.A .No 389 of 2020 arising out of

2

the said application , he had been granted interim bail in vide order dated 26.05.2020 for a period of fifteen days and the same had been extended for another 21 days vide order dated 09.06.2020 passed in I.A. No.487 of 2020 till 30.06.2020 and till 22.07.2020 vide order dated 01.07.2020 . The interim bail was further extended vide order dated 22.07.2020 passed in I.A. No. 628 of

2020 as a last chance. BLAPL No. 1664 of 2020 was ultimately withdrawn on 04.08.2020. As he had not surrendered in time, warrant had been issued against him.

The petitioner had approached the Hon'ble Supreme Court vide SLP (Crl) No. 4058 of 2020 for bail. The SLP was dismissed vide order dated 04.09.2020 with the observation that dismissal of the SLP would not come in the way of the petitioner to apply for bail afresh if so advised which would be decided on its own merits and in accordance with law.

The petitioner surrendered in Court on 07.09.2020 and moved the learned J.M.F.C. (Rural) Cuttack for bail who rejected his prayer on the same day. He thereafter moved the learned Sessions Judge for bail in BLAPL No.752 of 2020, which has been rejected by order dated 28.09.2020. Thereafter this application.

The prosecution case in brief is that on 23.11.2019 when the I.I.C., Tangi P.S. along with his staff conducted raid in the factory named and styled as "Gajanand Industries" at Manguli, they found the present petitioner present with about 40 to 50 labourers working

3

there. The petitioner disclosed that his father is the Proprietor and he is the Manager of the said Unit. During search they found Swostik ganesh Mustard Oil, Ruby Gold (palmolein) Golen drop mustard Oil and Agni mustard oil pouches sealed packets containing 1 litre sealed tins, empty cartons of all brands with trade mark image kept in store room and products were also under processing .The company logo Golden drop Mustard oil Swad Dilse Pure Mustard Oil and Trishul RRB logo found on the Golden drop Oil brand and Agni Mustard Oil brand sealed pich packets, number of sealed cartons and sealed mustard oil/ palmolein tins were kept inside the store room for transportation. These oils were under the process of packing by machinery inside the unit. During verification, the petitioner stated that his unit is only collecting mustard oil, palmolein oil from different firms by tanker and the unit is only doing packing and marketing. He produced temporary Trade Mark Certificate from Kharagapur Trade Mark Bureau issued in favour of Gajanand Industries. He produced applications for registration of trade mark in respect of Golden Drop Swad Dilse logo and word, Trisul RRB logo and word, Ruby Gold logo and word ; Food safety Licence in favour of Gajananda Industries but could nor produce any legal authority towards procuring of edible oils,

Sukanta packing, selling and transporting. The Addl. S.P. had requested the Chief District Medical Officer (in short "CDMO") over telephone to depute the Food and Safety Inspector for verification of documents and collection of

4

samples but she did not turn up. The CDMO intimated that she was in dual charge of Cuttack and Jagatsinghpur and was not receiving the telephone call. So he seized all documents and collected samples of different brands of oil in presence of the petitioner and witnesses for chemical analysis. Six samples -

- i) One sealed 1 litre pouch of Swastik Ganesh mustard oil,
- ii) One sealed 1 litre pouch of Rubu Gold palmolein,
- iii) One sealed 1 litre pouch of Golden drop mustard Oil,
- iv) One sealed 180 ml bottle of Agni mustard Oil,
- v) One 180 ml bottle of rice bran oil, and
- vi) One 180 ml bottle of palmolein oil

were seized and sent to Deputy Director -cum- Food Analyst, Govt. of Odisha, S.F.T.L., Bhubaneswar on 26.11.2019 vide D.R. No 2861 for chemical analysis. On 26.11.2019, all the seized documents were sent to the Food safety Officer, Cuttack (T) C.D.M.O. for verification and examination.

On 22.01.2020, which is two months after the date of raid, the I.I.C., Tangi received letter No 187(1)/DPHO, Cuttack dated 04.01.2020 from the District Public Health Officer that the food licence submitted by the petitioner was not valid as per the current online FLRS system which had started in 2018. Date i.e. 2018 in the license copy was also not valid food license in 2018 was issued in online format only.

On the same day i.e. 22.01.2020, the S.I of Police Station submitted FIR leading to registration of Tangi P.S. Case No.12 dated 22.01.2020 against the proprietor Om Prakash Gupta and the Manager Gopal Gupta of

5

Gajanand Industries for commission of offences under Section - 420/ 467/468/471/34 I.P.C read with Section - 103/104 of the Trade Marks Act 1999.

On 22.01.2020, raid was conducted in presence of Addl. Tahasildar Tangi - Choudwar. The petitioner was asked to produce original documents, he stated that he

had submitted all on 23.11.2019. He failed to produce factory nad Boiler licence, certificate of SPCB and Fire and safety certificate and there was no Chemist of Laboratory Assistant to examine the edible oil which is being procured and is being packed nor any Laboratory for testing . The three godowns were seized and sealed on 22.01.2010 and she seized 2904 cartons each carton containing 10 pouches of one liter each Rubi Gold refined Sun-flower Oil, 1120 cartoons each carton containing 20 pouches of $\frac{1}{2}$ liter of Rubi Gold Refined Sun-flower Oil, 770 cartons each cartoon containing 10 pouches of one liter each Rubi Gold refined palmoliein oil, 512 cartons each carton containing 12 pouches of one liter each of Golden Drop pure mustard oil, 72 cartoons each carton containing 4 jerrykan containing 5 liter of each of Golden Drop Pure mustard oil, 960 cartoons each carton containing 14 pouches of $\frac{1}{2}$ liter of Golden Drop Pure mustard oil, 152 cartoons each carton containing 12 pouches each containing one liter Swastik Ganesh Mustard oil, 880 cartoons each cartoon containing 24 pouches of half liter each of Swastik Ganesh Mustard Oil, 3152 sealed tin containers each containing 15 kg of Rubi Gold imported refined Palmolein Oil, 288 tin containers

6

each containing 15 kg of Rubi Gold Sunflower oil, 80 cartoons each containing 24 bottles containing half liters each of Swastik Ganesh Mustard Oil and 121 cartoons each containing 50 bottles of 200ml each of Swastik Ganesh Mustard Oil along with empty cartons of all brands with different Trade Marks, the company Logo of different brands of Mustard Oil and Palmolein oil and packing materials.

She collected samples from the stocks of Ruby Gold Refined palmolein Oil, Golden Drop mustard oil, and Swastik Ganesh Mustard Oil in presence of witnesses .She also seized wrapper of Ruby Gold imported refined palmolein oli having mark 15 kg and one empty litre pouch having print Ruby Gold imported refined palmolein oil .

The opinion in the chemical examination report dated 22.01.2020 of the Deputy Director -cum- Food Analyst to Govt. of Orissa State Food Testing Laboratory in respect of the six samples seized on 23.11.2019 (date of raid) was that the samples were adulterated and not suitable for human consumption. So offences under Section 272 and 273 of the IPC were added to the case.

Preliminary chargesheet dated 20.05.2020 has been submitted against the petitioner and his father Om Prakash Gupta for commission of offences punishable

under Sec- 420/467/468/471/272/273/34 I.P.C keeping investigation as verification reports from concerned Departments is awaited and more clues are to be obtained and that Section - 103 and 104 Trade mark Act

7

will be added after obtaining the report.

Mr. B.K Sharma, learned counsel for the petitioner has submitted that the petitioner had applied for licences under the FSSA and as per the provisions of Section 31 (4) proviso of the FSSA, after expiry of the specified period of two months, as his application had not been rejected, commencement of business is not illegal. His further case is that the petitioner's firm is not the manufacturer of the oil and it is only a packer of various types oil for sale. The samples which had been collected on the date of raid by the police were without observing proper precautions and although seized on 23.11.2019, they have been sent on 26.11.2019 for analysis. So even if they were found not to conform to standard no reliance should be placed on reports dated 22.01.2020 in respect of those sample as the reports of the Designated Officer -cum- DPHO, Cuttack vide letter No 2483 dated 17.02.2020 in respect of the samples collected subsequently on 14.01.2020 by the Food Safety Officer indicates that the samples conform to the prescribed standards under FSSA. Even thereafter i.e. on 18.06.2020, the Deputy Director-cum-Food Analyst, State Food Testing Laboratory reported to the learned J.M.F.C.(R), Cuttack that the four samples drawn and tested on her direction are not adulterated and not substandard and are fit for human consumption for which the seized articles were directed to be released in the zima of the petitioner. In view of the subsequent reports in respect of samples drawn by the Food Safety Officer

8

which state that the samples were not adulterated and are fit for human consumption, offences under Section 272 and 273 I.P.C are not made against the petitioner for which the prayer of the bail should be favourably considered. He has also submitted that the petitioner is in custody since 22.01.2020 and this Hon'ble Court in I.A. No.389 of 2020 in BL APL No. 1664 of 2020 vide order dated 26.05.2020 had granted interim bail of 15 days to the petitioner which was extended from time to time. After expiry of the period, he has surrendered in

Court although after the date fixed .Delay in surrender was due to confusion regarding automatic extension of interim bail during the Covid-19 pandemic pursuant to order the Hon'ble Supreme Court and this Court. He further submits that in view of resurgence of the covid pandemic and rapid spread of infection, he should not be detained any further in jail as he is prepared to cooperate with investigation.

Learned counsel for the State vehemently opposed the prayer for bail submitting that the petitioner does not deserve to be granted bail as he is involved in adulteration of cooking oil and repackaging and selling it in the market to earn profit under reputed brand names and this oil has been found to be unfit for human consumption. It was his submission that samples collected by the Police on the date of raid did not conform to the standards of food safety and found to be unfit for human consumption for which the case has been registered against the petitioner and his father. The

9

samples seized subsequently by the Food Safety Officer, were supplied by the petitioner and so it is not surprising that they were found fit for human consumption. His additional submissions are that the prayer for bail of the petitioner has been rejected by the Hon'ble Supreme Court. petitioner no indulgence should be shown to him as he has misused the liberty granted to him by not surrendering in time.

I have perused the FIR, case diary, the two affidavits filed by the I.O enclosing three reports pertaining to the samples of oil collected on three different dates.

Pursuant to the order of this Court, the I.O. has filed two affidavits. With the first affidavit dated 09.12.2020, copy of letter No 2484 dated 17.02.2020 of the Designated Officer cum DPHO Cuttack enclosing Copies of the inspection report dated 14.01.2020 and copies of eight analysis reports dated 10.02.2020 in respect of samples drawn on 14.01.2020 have been annexed as Annexure-A and Copy of letter No 2688 dated 18.06.2020 of the Deputy Director Cum Food Analyst addressed to the learned J.M.F.C. (R), Cuttack of 2020 enclosing four reports dated 18.06.2020 in respect of four samples - G, H, I and J has been annexed as Annexure-B. With the second affidavit dated 22.01.2021, copies of communication letter alongwith the reports of the Food Analyst dated 21.01.2020 (in respect of six samples drawn on 23.11.2019) have been filed as Annexure-X Series and Copy of the

chargesheet has been filed as Annexure-Y. The I.O has indicated in her second affidavit that "several reports" from the "concerned Department are awaited and more clues are yet to be unearthed and also for collection of further evidence that is verification of District level Officer, verification of documents at Kolkotta, verification of Bank accounts and verification of report of State Pollution Control Board.

A perusal of the case diary reveals that after receiving complaints about illegal activities of the accused persons, raid was conducted by the I.I.C., Tangi Police Station alongwith his staff on 23.11.2019 in the premises of M/s Gajanand Industries which consists of two godowns and a building and six samples vide A, B, C, D, E and F were collected. The petitioner had produced a temporary trademark certificate in respect of packaging Swastik Ganesh Mustard Oil but no documents authorizing him to procure, pack and sell the edible oil of the companies which were found in the premises. But strangely though six samples were drawn on the date the raid was conducted and documents were seized, but neither the premises were sealed nor the stock of oil was seized on that day. The reports dated 21.01.2020 in respect of the samples A, B, C, D, E and F drawn on 21.11.2019 indicated that they were adulterated and not suitable for human consumption.

Thereafter on the request of the firm, inspection has been done and samples collected by the Food Safety Officer on 14.01.2020. The reports of the

11

Food Analyst dated 10.02.2020 in respect of the samples collected by the Food Safety Officer on 14.01.2020 state that the oil samples conform to the standards laid down in the FSSA Act 2002, although two packets were found to be misbranded due to absence of information regarding date of manufacture and expiry date. Similar the reports dated 18.06.2020 of the four samples collected and tested on the direction of the learned JMFC also conform to the prescribed standard under FSS Act 2006 packing.

From the nature of allegations, it prima appears that the petitioner was managing the firm and the co-accused his father is the proprietor, and that different types of edible oil had been procured from different

companies for the purpose of packaging and reselling under different brand names but the petitioner firm did not have the requisite permissions for doing so. There are three sets of reports of the Food Analyst on record. The reports dated 10.02.2020 and 18.06.2020 in respect of the samples drawn subsequently i.e on 14.01.2020 and on direction of the learned JMFC respectively reveal that the samples conform to the prescribed standards laid down in the FSSA 2006 except that reports dated 10.02.2020 in respect of two samples (Golden drops - mustard oil and Swastik ganesh -Mustard Oil were found to be misbranded as date of packing and expiry was not visible on the packet. The case diary also reveals that the stock of oil which was seized on 22.01.2020, has been released in the zima of the petitioner pursuant to order of

12

the learned Magistrate as they are perishable items and the Deputy Director -cum- Food Analyst, reported that they are fit for human consumption. That apart, the petitioner has been permitted by the learned JMFC, to sell the oil and deposit the entire sale proceeds as and when required by the Court. More than one year has elapsed since the date of registration of the case and more than six months has elapsed since submission of the preliminary chargesheet, but further investigation is still pending. But the I.O has not stated anywhere in her affidavits that custodial interrogation of the petitioner is necessary for the purpose of further investigation.

Adulteration of food is a heinous crime as consumption of such food poses serious danger to the health of the consumers. As it is easy to adulterate an edible item without arousing immediate suspicion and the returns are so attractive, this activity has spread its tentacles like cancer in our society, harming the health of both young and old. Businessmen and traders indulge in adulteration of food with a view to make quick money, closing their eyes to the deleterious effects the consumption of the adulterated food article will have on the consumer. Use and consumption of adulterated/ substandard oil can adversely affect the health of consumers who consume it or use it regularly as a medium for cooking. Continuous use of adulterated oil over a period of time can cause gall bladder cancer, dropsy, glaucoma and loss of eyesight.

The Prevention of Food Adulteration Act 1954 in

13

short the "PFA") has been repealed in the year 2006 and replaced by the Food Safety and Standard Act 2006 (in short the "FSSA") which is an Act to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto.

But in the present case, though raid was conducted on 21.11.2019 , and samples were drawn , the Food and Safety Inspector did not take part in the raid inspite of request of the police .As she did not respond to calls , raid was conducted in her absence . The absence of the Food and Safety Inspector when samples were drawn and failure to seal the premises and seize the stock and obtain the reports of the Food Analyst in respect of samples drawn on the date of raid has apparently proved to be beneficial to the accused . In view of the deleterious effect of consumption of adulterated food or use of an adulterated cooking item or medium can have on the health of a person, it is necessary that the CDMO and the Food Safety Officer (here the Food and Safety Inspector) should work in tandem with the police whenever there the need arises and the latter should not avoid his/ her duties and respond to any request to take part in a raid being conducted by the police and take steps for obtaining the

14

reports of the Food Analyst promptly. Arrangements should be made so that an officer is readily available and he / she does not avoid his / her duties.

Now coming to the question of grant of bail it is apparent that the petitioner is in custody for more than one year as he was arrested on 22.01.2020 and after being released on interim bail has surrendered on 07.09.2020.

The Hon'ble Supreme Court in a catena of decisions has dealt with the principles to be kept in mind while considering the prayer for bail. It would be apposite to refer to the decisions rendered in Mahipal vs. Rajesh Kumar : (2020) 2 SCC 118 and Sanjay Chandra vs. CBI: (2012) 1 SCC 40 .

In the case of in Mahipal vs. Rajesh Kumar, the Hon'ble Apex Court has held as follows :

"12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straight jacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of

15

the considerations involved, the continued custody of the accused sub-serves the purpose of the criminal justice system....."

In the case of Sanjay Chandra (supra), it has inter alia held :

". 21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the

Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one

16

must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

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40. The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required.

41. This Court in Gurcharan Singh and Ors. Vs. State AIR 1978 SC 179 observed that two paramount considerations, while considering petition for grant of bail in non-bailable offence, apart from the seriousness of the offence, are the likelihood of the accused fleeing from justice and his tampering with the prosecution witnesses.

42. Both of them relate to ensure of the fair trial of the case. Though, this aspect is dealt by the High Court in its impugned order, in our view, the same is not convincing.

43. When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is : whether the same is possible in the present case. There are seventeen accused persons. Statement of the witnesses runs to several hundred pages and the documents on which reliance is placed by the prosecution, is voluminous. The trial may take considerable time and it looks to us that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that accused should be in jail for an indefinite

period. No doubt, the offence alleged against the appellants is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, should not deter us from enlarging the appellants on bail when there is no serious contention of the respondent that the accused, if released on bail, would interfere with the trial or tamper with evidence. We do not see any good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge-sheet..."

Keeping in mind the aforesaid discussion and the decisions of Hon'ble Supreme Court ; and considering the submissions of the learned counsels, the nature of allegations against the petitioner, the materials collected by the investigating agency, the period of his detention in jail custody and the resurgence of the Covid-19 pandemic, I am inclined to allow the prayer for bail of the petitioner.

Let the petitioner-Gopal Gupta be released on bail on such terms and conditions as deemed fit by the learned Court in seisin of the case including the following conditions :

- i) He will not indulge in any criminal activity.
- ii) He will not try to influence prosecution witnesses or tamper with evidence.
- iii) He will appear before the I.I.C., Tangi Police Station as and when called upon to do so by the I.O for purpose of investigation.
- iv) He will appear before the Court on each date fixed for trial.

The BLAPL is accordingly disposed of. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the petitioner may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587 dated 25th March, 2020 as modified by Court's Notice No.4798 dated 15th April. 2021.

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Savitri Ratho, Judge