

2023 LiveLaw (SC) 533

IN THE SUPREME COURT OF INDIA
SURYA KANT; J., DIPANKAR DATTA; J.
Special Leave to Appeal (Crl.) No(s).4169/2023; 13-07-2023
RABI PRAKASH versus THE STATE OF ODISHA

Narcotic Drugs and Psychotropic Substances Act, 1985; Section 37 - In case of prolonged incarceration, conditional liberty will override the statutory embargo under Section 37 of the Act. Prolonged incarceration is against fundamental right guaranteed under Article 21, ie, protection of life and personal liberty. (Para 4)

(Arising out of impugned final judgment and order dated 11-11-2022 in BLAPL No.11613/2021 passed by the High Court of Orissa at Cuttack)

For Petitioner(s) Mr. Shyam Manohar, Adv. Ms. Kiran Pandey, Adv. Ms. Isha Yadav, Adv. Mr. Laxmi Sewak, Adv. Ms. Manju Jetley, AOR

For Respondent(s) Ms. Sharmila Upadhyay, AOR Mr. Sarjit Pratap Singh, Adv. Ms. Supriya R Pandey, Adv. Mr. Rajesh Sharma, Adv.

ORDER

1. The petitioner seeks his enlargement on bail in P.S.Case No.91 of 2019, registered at Police Station Semiliguda, District Koraput, out of which T.R.Case No.27 of 2019 is pending in the Court of Addl.Sessions Judge-cum-Special Judge, Koraput, for commission of offence punishable under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act').

2. The prosecution case appears to be that the police party while on patrolling duty on 02.10.2019 at about 12.30 p.m. on Nandapur-Semiliguda road MDR-55, spotted one full body twelve wheeler Truck (Eicher) bearing No.EB-13-BD-5753 coming from Nandapur side at a high speed and accordingly they chased and detained the truck at Bodenga Chhak and found three persons boarded in the said truck including the driver. Eventually, 247 kg. Ganja was recovered from the truck. The petitioner was one of the occupants of the truck and was arrested at the spot. He has been in custody for more than three and a half years. There are no criminal antecedents against the petitioner.

3. We are informed that the trial has commenced but only 1 out of the 19 witnesses has been examined. The conclusion of trial will, thus, take some more time.

4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.

5. However, we find some merit in the contention of learned counsel for the respondent – State that the petitioner being not a resident of the State of Orissa, some stringent conditions are required to be imposed upon him.

6. Consequently, while directing that the petitioner shall be released on bail on his furnishing bail bonds to the satisfaction of the Trial Court, it is directed that he shall be required to produce two local sureties before the Trial Court. The petitioner shall also

appear before the Trial Court on every date of hearing. In case he absents himself, it shall be taken as a misuse of concession of bail granted to him today by this Court. Ordered accordingly.

7. The Special Leave Petition stands disposed of accordingly.
8. As a result, pending interlocutory applications also stand disposed of.

© All Rights Reserved @LiveLaw Media Pvt. Ltd.

*Disclaimer: Always check with the original copy of judgment from the Court website. Access it [here](#)