

[2023 LiveLaw \(SC\) 670](#)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
HRISHIKESH ROY; J., PANKAJ MITHAL; J.

August 17, 2023

CRIMINAL APPEAL NO. 2468/2023 (Arising out of SLP(Crl.)No.6582/2023)

EJIKE JONAS ORJI versus NARCOTICS CONTROL BUREAU

Bail - Bail condition of NDPS accused relaxed - The liberty of an accused who is facing prolonged trial deserves attention of the Court - Prolonged incarceration of undertrial prisoners violates the constitutional principles of dignity and liberty. (Para 8 - 10)

(Arising out of impugned final judgment and order dated 21-02-2023 in CRLMA No. 16310/2022 in Bail Appln. No.997 of 2022 passed by the High Court of Delhi at New Delhi)

For Petitioner(s) Mr. Adarsh Priyadarshi, Adv. Ms. Shagufa Salim, AOR

For Respondent(s) Mr. K. M. Nataraj, A.S.G. Ms. Indira Bhakar, Adv. Mr. Venkata Raghu Vamsi Dasika, Adv. Mr. Sachin Sharma, Adv. Mr. Arvind Kumar Sharma, AOR

ORDER

Leave granted.

2. Heard Mr. Adarsh Priyadarshi, learned counsel appearing for the appellant. The respondent is represented by Mr. K. M. Nataraj, learned ASG of India.

3. It is submitted by the learned counsel for the appellant that the bail condition imposed by the High Court in its Order dated 13.6.2022 is causing serious prejudice to the accused as the appellant is a Nigerian citizen and the High Commission of Nigeria is unlikely to grant him the certificate of assurance to the effect that the accused shall not leave the country till the trial is concluded and shall appear before the Special Court, on each and every day, unless exempted by the Special Court. It is provided specifically in the impugned order that the accused shall not be released on bail without such a certificate of assurance from the High Commission of Nigeria.

4. Mr. Adarsh Priyadarshi, learned counsel for the appellant submits that although the appellant is a foreign citizen, he is married to a citizen of India and the couple have a child and the wife and the child are both residing in Delhi. It is also pointed out that his Delhi address has been verified by the Investigating Officer of the case and therefore although the appellant is a foreign citizen, he has roots in Indian Society.

5. As can be seen, the appellant was arrested on 02.6.2014 and he has been under incarceration for last around nine years and three months. Mr. K. M. Nataraj, learned ASG would submit that bail condition was imposed by the High Court by following the rulings of this Court in **Supreme Court Legal Aid Committee representing undertrial Prisoners Vs. Union of India & Ors.**¹

6. We have noted the elaborate bail conditions imposed in the High Court's order (13.6.2022). For ready reference they are extracted: -

"A. The applicant will furnish a personal bond in the sum of Rs.1 lakh, with two sureties in the like amount, to the satisfaction of the Special Court/Duty Magistrate.

B. The applicant's passport will be deposited with the Special Court.

¹ (1994) 6 SCC 731

C. The applicant will present himself at the office of the NCB every Monday at 11:00 am, and will be released within one hour after completion of the formalities. Exemption from this requirement may be granted by the Special Court in exceptional circumstances.

D. The Special Court will seek a certificate of assurance from the High Commission of Nigeria, New Delhi, that the accused shall not leave the country till the trial is concluded, and shall appear before the Special Court on each and every date, unless exempted by the Special Court in exceptional circumstances. The applicant will not be released on bail in the absence of such a certificate of assurance.

E. The applicant will reside at the address mentioned in the charge-sheet which has been verified by the IO. In the event of any change in his address, the applicant will give prior information of the same to the IO and the Special Court.

F. The applicant will give his mobile number to the IO, and ensure that the mobile number is kept in working condition, and is operational at all times.

G. The applicant will drop a pin on Google Maps to ensure that his exact location is available with the IO at all times.

H. The applicant will not tamper with the evidence, directly or indirectly, in any manner.

I. The applicant will not contact any of the prosecution witnesses or act in any other manner prejudicial to the trial.

J. In the event any further offence is registered against the applicant during the period he is out on bail, the NCB is at liberty to apply to the Special Court for cancellation of the bail granted to the applicant.

K. The Special Court will also be at liberty to cancel the bail of the applicant on account of any violation of the conditions laid down in this order.”

7. Barring the condition (D) relating to the certificate of assurance from the High Commission of Nigeria, the appellant is prepared to fulfill all the other bail conditions including deposit of his passport with the Special Court and also present himself in the office of the NCB on every Monday at 11:00 a.m.

8. The liberty of an accused who is facing prolonged trial deserves attention of the Court. Admittedly in the course of last seven years, the trial could not be concluded and we are informed that out of twenty witnesses, only thirteen have been examined so far. We are also informed that the Special Court in Delhi where the trial is being conducted is overloaded with about 400 trial cases.

9. Prolonged incarceration of undertrial prisoners violates the constitutional principles of dignity and liberty. In this case, even though Bail was granted, the accused could not be released due to an onerous condition. In this regard, it would be apposite to refer to the judgment of this Court in ***Hussainara Khatoon v Home Secy., State of Bihar (1980) 1 SCC 81*** where it was held that Article 21 includes within its ambit the right to speedy trial. It was further held that the procedure under which a person is deprived of personal liberty should be “reasonable, fair and just”.

10. Moreover, this Court recently in ***Mohd Muslim @Hussain v State(NCT of Delhi) 2023 SCC OnLine SC 352*** speaking through Ravindra Bhat J. while granting Bail to an undertrial prisoner, also an accused under the *NDPS Act, 1985* reflected on the urgency to ensure that trials involving special laws with stringent provisions are taken up and concluded speedily :

“22. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the

injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling.

23. The danger of unjust imprisonment, is that inmates are at risk of “prisonisation” a term described by the Kerala High Court in *A Convict Prisoner v. State*, 1993 SCC OnLine Ker 127 “a radical transformation” whereby the prisoner:

“loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes.”

10. Considering the above, having regard to the other conditions imposed in the bail order dated 13.6.2022, we are of the view that even without satisfying the condition (D), bail can be considered for the appellant who is in custody since 02.6.2014. Accordingly subject to the bail conditions as mentioned in the High Court’s order (except the condition (D), the appellant be released on bail as directed vide order dated 13.6.2022.

11. With the above, the appeal stands allowed.

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