

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 1500 of 2023

An application under Section 482 of the Code of Criminal Procedure, 1973.

AFR

Suresh Chandra Sahoo

@ Sura @ Sarat Chandra Sahoo

@ Somanath

..... Petitioner

-Versus-

State of Odisha

.....

Opp. Party

Advocate(s) appeared in this case :-

For Petitioner : M/s. A.S. Paul & P. Martha,
Advocates

For Opp. Party : Mr. S.K. Mishra
Addl. Standing Counsel

CORAM :

JUSTICE SASHIKANTA MISHRA

ORDER

19th May, 2023

SASHIKANTA MISHRA, J.

The present case is yet another instance of lack of application of judicial mind by a Special Judge under the NDPS Act resulting in violation of the right to liberty guaranteed under Article 21 of Constitution of India and disregard to the statutory mandate embodied

under Section 167(2) of the Code of Criminal Procedure and Section 36-A of NDPS Act.

2. The petitioner is one of the accused in T.R. Case No. 126 of 2021 pending in the Court of learned Addl. District & Sessions Judge-cum-Special Judge under NDPS Act, Khordha. The said case arises out of Special Task Force (STP) Case No. 31 of 2021 registered under Section 21(c)/29 of NDPS Act. In the present application filed under Section 482 Cr.P.C., the petitioner seeks to challenge the order dated 20.02.2023 passed by the said Court in rejecting his application filed under Section 167(2) Cr.P.C. seeking default bail as according to him, charge sheet was not submitted within the statutory period.

3. The facts of the case are that on the basis of the FIR lodged by the Inspector of Police, STF, Bhubaneswar on 03.09.2021, one Manoranjan Das was apprehended as he was in possession of brown sugar weighing 1 kg 34 grams. Two other persons, who were supposedly assisting him, managed to flee. In course of investigation, it came to light that three persons, namely,

Manoranjan Das, Suresh Chandra Sahu (present petitioner) and Lizu hatched conspiracy with brown sugar mafia, namely, Sk. Sabir Alli and Ismile Seikh of West Bengal and Kalu Mistri of Jaleswar to deal with brown sugar. The brown sugar was procured from said two persons from West Bengal by Kalu Mistri. Manoranjan Das was arrested and forwarded to the Court of Special Judge, Khordha on 04.09.2021 and steps were taken to apprehend the other accused persons, who had absconded. Charge sheet No. 9 dated 10.03.2022 was submitted against Manoranjan Das under Sections 21(C)/29 of NDPS Act keeping the investigation open under Section 173(8) of Cr.P.C. On 17.08.2022, the present petitioner, namely, Sarat Chandra Sahoo @ Sarat Kumar Sahoo @ Sura @ Somanath was taken on remand in the aforementioned case as he was in custody in connection with T.R. No. 51 of 2022 and was lodged in Sub-Jail, Khordha since 28.05.2022. On 20.02.2023, the petitioner filed an application under Section 167(2) Cr.P.C. to release him as despite expiry of the period of 180 days no charge

sheet was submitted against him. By order dated 20.02.2023, the Court below observed that the I.O. had submitted charge sheet No.9 dated 10.03.2022 against accused Manoranjan Das, who was in custody and Suresh Chandra Sahoo (petitioner), Lizu, Sabir Alli, Ismile Seikh and Kalu Mystri showing them as absconders and keeping the investigation open under Section 173(8) of Cr.P.C. The Court below further noted that the petitioner was in custody in connection with another case and had been remanded in the present case. Observing thus, the petition was rejected as having no merit. The Investigating Agency submitted final charge sheet being Charge Sheet No. 5 dated 12.02.2023 against (1) Manoranjan Das, (2) Sarat Chandra Sahoo (petitioner), (3) Sabir Alli and (4) Sk. Ismile under Sections 21(C)/29 of NDPS Act also keeping the investigation open under Section 173(8) of Cr.P.C.. On such charge sheet, the Court took cognizance of the aforementioned offences by order dated 04.03.2023.

4. Heard Mr.A.S. Paul, learned counsel for the petitioner and Mr. S.K. Mishra, learned Addl. Standing Counsel for the State.

5. Mr. Paul would argue that the petitioner having been remanded on 17.08.2022, 180 days expired on 13.02.2023. Though the charge sheet No.5 submitted against the petitioner mentions the date 12.02.2023, yet the same was actually submitted in the Court on 22.02.2023, i.e.10 days after the expiry of 180 days. The petitioner was neither produced before the Court on 13.02.2023, i.e., on the 181st day nor his indefeasible right to be released on default bail was informed to him. On the other hand, by referring to charge sheet No.9 dated 10.03.2022 submitted only against Manoranjan Das, the Court below rejected the application filed by the petitioner, which is grossly illegal being contrary to the statutory mandate as well as the settled position of law.

6. Mr. Mishra would contend that since the charge sheet No.5 dated 12.02.2023 was submitted one day before the expiry of the 180 day period, no right can be said to have accrued in favour of the petitioner to be

released on default bail. However, Mr. Mishra fairly submits after referring to the records of the case that there is no evidence of the charge sheet having actually been submitted to the Court on 12.02.2023.

7. In order to appreciate the rival contentions raised at the time of hearing, this Court called for the photocopy of the entire order sheet of the case. Not finding mention of the date in the order sheet on which the charge sheet was received, the Court below was directed to submit a report explaining the discrepancies. In his report submitted on 01.05.2023, the First Addl. District & Sessions Judge, Khordha, inter alia, stated as follows:

“With reference to the Order dated 25.04.2023 passed by the Hon’ble Court in CRLMC No. 1500 of 2023, I am to state that on 20.02.2023 a petition u/Sec. 167(2) Cr.P.C. was filed on behalf of the accused Sarat Chandra Sahoo @ Sarat Kumar Sahoo @ Sura @ Somanath in part file case record No. 126 of 2021 (Part File) and the said petition was rejected on that very day on merit. Further, I am to state that the charge sheet No. 09 dated 10.03.2022 was filed by the I.O. in original case record in T.R. No. 126 of 2021 on dated 21.03.2022 against accused persons namely, Manoranjan Das, Suresh Chandra Sahoo @ Sura, Sabir Alli and Ismile Khan keeping investigation open for arrest of absconding accused persons namely, Suresh Chandra Sahoo @ Sura, Sabir Alli, and Ismile Khan. After submission of above said charge sheet, the case was proceeded against the

UTP accused Manoranjan Das and on 09.08.2022 it was transferred to 2nd Addl. Sessions Judge, Khordha for disposal in accordance with law.

On remand of accused Sarat Chandra Sahoo @ Sarat Kumar Sahoo @ Sura @ Sumanta on dated 17.08.2022 the part file in T.R.No. 126 of 2021 (Part File) is opened and on 22.02.2023 the I.O. has submitted the final charge sheet bearing No. 05 dated 12.02.2023 u/Sec.21(C)/29 of the N.D.P.S. Act against the accused persons namely, Manoranjan Das, Suresh Chandra Sahoo @ Sura, Sabir Alli, and Ismile Khan and it is mentioned in the T.R. Case No. 126 of 2021.”

Again in his report dated 11.05.2023, the First Additional District & Sessions Judge, Khordha stated as follows:

“With reference to the Order No.5 dated 04.05.2023 of the Hon'ble Court passed in CRLMC No. 1500 of 2023, I am to state that the Investigating Officer in C.S. No. 09 dated 10.03.2022, has mentioned the name of accused-Manoranjan Das as accused No.1 vide SI. No.11 (Particulars of accused persons charge sheeted) of the charge sheet. Similarly, in SI. No.11 {Particulars of accused persons not charge sheeted (suspected)} of the C.S., the I.O has mentioned the name of 1) Sabir Alii 2) Ismile Seikh and 3) Suresh Chandra Sahoo (@ Sura. Further, in the investigation report (Case diary) dated 10.03.2022 it has been mentioned by the I.O. that;

“On the basis of oral and documentary evidence, prima facie case is well made out u/Sec. 21(c)/ 29 N.D.P.S Act, 1985 against the accused person i.e. a)- Manoranjan Das, who was involved in the illegitimate business of contraband brown sugar with his associates Suresh Chandra Sahoo, Sabir Alli and Ismile Seikh of Mursidabad, West Bengal (sic) and by that way has earned money/ property for his Wrongful

gain and in that that course was apprehended by the police and other would manage to escape from the spot and a commercial quantity of brown sugar was seized from his exclusive and conscious possession. Hence, I submit STF P.S. Case Charge sheet No. 9 dated 10.03.2022 u/Sec. 21(C)/29 HDPS Act- 1985 against the above named accused person, keeping further investigation open u/Sec. 173(8) Cr.P.C. to attending the remaining point of investigation including arrest of absconded accused persons and financial investigation in this case to face the trial in the court of law”

Further, from the order dated on 08.12.2021 it transpires that on the prayer of the I.O this Court has issued NBW/A against accused persons namely, Sabir Alli and Ismile Seikh much prior to submission of charge sheet No.09 dated 10.03.2022.

So in the above facts and circumstances, I am of the view that the charge sheet No. 09 dated 10.03.2022 has been submitted Manoranjan Das and three others namely, Suresh Chandra Sahoo, Sabir Alli and Ismile Seikh showing them as absconder and keeping in mind the said view, the petition dated 20.02.2023 filed on behalf of the accused Sarat Chandra Sahoo @ Sarat Kumar Sahoo @ Sura @ Somanath was rejected.

Further, I am to state that the I.O has again submitted the C.S. No. 05 dated 12.02.2023 against accused persons namely, Manoranjan Das, Suresh Chandra Sahoo @ Sura, Sabir Alli, and Ismile Seikh before this Court on 22.03.2023. On that day, I had been to Banpur to hold camp Court. The dealing assistant had put the C.S. No. 05 dated 12.02.2023 before the Presiding Officer-in-charge on that day and accordingly the Presiding Officer, in-charge has put her initial on the charge sheet and, as per the order dated 22.02.2023, the P.O. in-charge has directed the dealing assistant to put up the case record on 04.03.2023 for taking cognizance. Accordingly, the dealing assistant has put up the case record along with charge sheet No. 05 dated 12.02.2023

on 04.03.2023 for taking of cognizance. But, it is inadvertently mentioned in the order dated 04.03.2023 that the charge sheet No.05 dated 12.02.2023 is received on 04.03.2023, though in fact it is received on 22.02.2023.

(Emphasis supplied)

8. Apart from the apparent lack of care exhibited by the First Addl. District & Sessions Judge, Khordha while submitting report to the High Court, it is evident that charge sheet No.5 was actually received on 22.02.2023. A copy of the charge sheet No.5 dated 22.02.2023 reveals that on the first page thereof, the Special Judge has endorsed 'seen' and put his signature with date 22.02.2023. Thus, as on 13.02.2023, i.e., the 181st day, no charge sheet had been submitted against the present petitioner. A perusal of the order sheet also shows that the case was never posted on that date (13.02.2023) nor the accused persons produced before the Court to inform them of their right to be released on bail for the default of the prosecution in submitting charge sheet within the statutory period. The Apex Court as well as this Court in series of decisions have emphasized on the production of the accused before the Court (either physically or virtually) and of informing him

of his indefeasible right. It has also been emphasized time and again that the right to be released on default bail is akin to the fundamental right to liberty guaranteed under Article 21 of the Constitution of India. From what has been narrated hereinbefore, it is more than evident that learned Special Judge was sadly not alive to this Constitutional obligation.

9. Reading of the impugned order reveals that the application for default bail filed by the petitioner was rejected by referring to the charge sheet No.9 dated 10.03.2022 which, as stated earlier was submitted only against the accused Manoranjan Das, wherein the petitioner and two others were shown as suspects only but not charge-sheeted. In fact, by such time the present petitioner had not even been arrested. He was remanded much later, i.e., on 17.08.2022. So, how could the Special Judge observe in his order that the said charge sheet was submitted against the present petitioner also is beyond the comprehension of this Court. To reiterate, the name of the petitioner and the other two suspects was mentioned not under column 11 but under column 12 as 'Particulars of

accused persons Not Charge-sheeted (suspected)'. A Judicial Officer as senior as an Additional District & Sessions Judge committing such gross blunder is a matter of serious concern. It also proves the contention raised on behalf of the petitioner that as on the date of passing of the impugned order i.e., 20.02.2023, only one charge sheet was on record i.e., charge sheet No.9 dated 10.03.2022, which learned Court below, for the reasons best known to him, held to have been submitted also against the present petitioner.

10. This Court therefore, holds that the accused petitioner had acquired an indefeasible right to be released on bail for non-submission of charge sheet by 13.02.2023. Moreover, no charge sheet having been submitted against him even on 20.02.2023, rejection of his application for default bail is blatantly illegal and cannot be countenanced in law.

11. In the result, the CRLMC is allowed. The impugned order is quashed. The Court below is directed to release the petitioner on bail on such terms and conditions as he may deem fit and proper to impose

including the condition that he shall appear before the Inspector of Police, STF, Bhubaneswar on every Sunday at 10 A.M. till conclusion of trial and such fact shall be certified by the Inspector to the Court once in a month and further that he shall appear before the trial Court personally on each date of posting of the case without seeking representation and in case of even a single default, he shall be taken into custody.

Orissa High Court, Cuttack
The 19th May, 2023/ A.K. Rana

.....
Sashikanta Mishra,
Judge

