
(2019) 01 OHC CK 0021

In the Orissa High Court

Case No : BLAPL Nos. 4170, 6464, 6879, 8478 with 5353, 8548 Of 2017, 2354, 2672, 2674 Of 2018

Prakash Kumbhar And Ors

APPELLANT

Vs

State Of Odisha And Ors

RESPONDENT

Date of Decision : 21-01-2019

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 19, 20(b)(ii)(C), 21(c), 24, 27A, 37, 37(i)(b)(ii), 42, 42(2), 50, 55, 57
Code Of Criminal Procedure, 1973 — Section 439
Prevention Of Money Laundering Act, 2002 — Section 45, 45(1)
Constitution Of India, 1950 — Article 14, 21

Citation : (2019) 01 OHC CK 0021

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.K. Mishra, J

1. In all these petitions made U/s. 439 Cr.P.C., the petitioners have prayed bail for being accused of offences under Narcotic Drugs and Psychotropic

Substances Act, 1985 (hereinafter referred to as "NDPS Act") involving commercial quantity for which bar under Section 37 of NDPS Act is

required to be considered.

2. As the common question arises in all the above cases, hearing is taken up to consider the submissions of learned counsel for the parties.

3. Though several decisions are cited by learned counsel for both the parties, only relevants are referred to contextually to avoid multiplicity.

4. Learned counsel S.R. Mohapatra and Mr. Manas Chand submit that when the mandatory provisions of the NDPS Act such as Sec-42(1) and sec-

50(1) are found contravened or not complied with, the trial is vitiated and accused is entitled to bail. In support of his contention, they cited the decisions.

(i) (1994) 7 OCR-460 Rabi Sahoo v. State

(ii) 1991 (11) OLR-475 Satyabrata @ Sarat Mallia v. State

(iii) (1996) 10 OCR-372 Umakanta Patel v. State.

(iv) (2010) 47 OCR (SC)-752 Sami Ullaha v. Superintendent, Narcotic Central Bureau.

(v) (2013) 54 OCR-841 Thane Singh v. Central Bureau of Narcotics.

5. Sami Ullaha case deals with cancellation of bail under Section 439 Cr.P.C. after receipt of second report of laboratory. The said decision is no

help to the point posed here. The Thane Singh decision has been relied upon by the learned Additional Government Advocate and the same shall be

dealt with later.

6. It may be noted that the cited Rabi Sahoo decision has been referred to in the subsequent Umakanta Patel case.

7. In Satyabrata (supra) case it is held as follows:â?

â??If the accused is to be released on bail, the Court has to record its satisfaction that there are reasonable grounds to believe that the accused is not

guilty of the offence charged. Sub-sec, (i)(b)(ii) of Section 37 of the Act requires that the Public Prosecutor has to be given an opportunity to oppose

such application for such release. This has a definite purpose and the Public Prosecutor has a vital role to play in the whole process of reaching the

satisfaction by the Court and is required to present the entire material collected against the accused effectively and in opposition to the application of

bail showing that no reasonable ground exists for believing that the accused is not guilty of the offences chargedâ?. Then His Lordship granted bail In

view of violation of the statutory safeguards contained in Sec, 50(1) of the Act.

8. In Umakanta Patel (supra) case it is held as follows:â?

â??8. xxxxxxxx As has been stated earlier certain provisions including Section 50 of the Act are mandatory and non-observance thereof vitiates the

trial. Resort to Sections 42 and 50 of the Act is taken at the initial stage of investigation and compliance thereof can very well be ascertained from the

case diary. So in course of hearing of an application for bail if on scrutiny of the

diary, it appears that the procedural safeguards have not been followed, the Court can look to the same for the limited purpose of finding whether there are reasonable grounds to believe that the accused is not guilty. This finding of the Court, however, cannot be equated with the one which is recorded at the end of the trial to pronounce judgment. It may well be argued that even though non-observance of the statutory provisions is apparent on the face of the record, yet in course of trial it can supply the omission by leading oral evidence. To my mind, this cannot be accepted and on mere assumption of the probable evidence that may be led by the prosecution, accused cannot be refused bail.â??

9. In view of my discussions made above, while respectfully agreeing with the views propounded in Rabi Sahoo, (1994) 7 Ori CR 460 (supra), Fakir Sundari, (1995) 8 Ori CR 320 (supra) and Narahari Das (supra), I would hold that due to infraction of the requirements of Section 50 of the Act the accused is entitled to be released on bailâ??.

9. Learned counsel for the petitioner Mr. S.N. Das relying upon the decision reported in AIR 2017 (S.C)-5500 : (2018) 11 SCC-1N ikesh Tarachand

Shah v. Union of India contended that similar provision like sec-37 of The NDPS Act has been declared unconstitutional as it violates Articles 14 and 21 of the Constitution of India.

10. Putting emphasis upon the word â??opposeâ?, Mr. Das further submits that in view of the direction of Hon'ble Supreme Court

in Hussain v. Union of India (CrA.509/201 judgment dt. 09-03-2017) reported in 2017 (5) SCC-702 to the effect that, the sessions trials where

accused are in custody shall be normally concluded within two years; it is imperative to maintain consistency with that direction and the public

prosecutor must address the right to speedy trial of accused and in doing so, must show the contribution of accused, if any, to cause delay in trial and

where no fault is attributable, the court can ignore such â??opposeâ? and on consideration of other factors required u/s 439 Cr.P.C. can dispose of

the bail petition.

11. Both the above decisions will be discussed later with reference to the points urged.

12. Learned Addl. Govt. Advocate, Mr. A.N. Das submits in reply that the direction of Hon'ble Supreme Court in Hussain case (supra) is mandatory

and is to be implemented but the same has no effect for the purpose of consideration of bail petition under Section 37 of the NDPS Act.

13. It is categorically submitted by Mr. Das on behalf of the State that in order to give effect, the direction of Hon'ble Supreme Court in Hussain

Case, this Court can give any direction to speed up the trial and to ensure the completion of trial within two years. Beyond the above, nothing more

can be done by this Court while considering the bail petition under 37 of NDPS Act.

14. Referring A.R. Anthulle case, 1992 1 SCC 225, Thane Singh v. Central Bureau of Narcotics reported in 2013 (2) SCC 590 and Supreme

Court Legal Aid Committee v. Union of India reported in (1994) 6 SCC 731 learned Additional Government Advocate further contended that the

interest of society is to be kept in view while releasing the accused in the case under NDPS Act and the directions of in Hussain judgment are to be

balanced as far as possible.

15. It is noteworthy to mention that all the above decisions cited by learned Addl. Government Advocate, Mr. Das have been referred to in

the Hussain case (supra) for which I do not think proper to burden this order further.

16. Lastly, Mr. Das, learned Addl. Government Advocate while opposing the bail application submits that twin conditions test as provided u/s 37 of the

NDPS Act is mandatory as per the decisions rendered by the Hon'ble Supreme Court in the case of Satpal Singh v. the State of Punjab reported in

2018 (5) SCALE 519, and drew the attention of this court to the following of that decision:—

“Under Section 37 of the NDPS Act, when a person is accused of an offence punishable under Section 19 or 24 or 27A and also for offences

involving commercial quantity, he shall not be released on bail unless the Public Prosecutor has been given an opportunity to oppose the application for

such release, and in case a Public Prosecutor opposes the application, the court must be satisfied that there are reasonable grounds for believing that

the person is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. Materials on record are to be seen and the

antecedents of the accused are to be examined to enter such a satisfaction. These limitations are in addition to those prescribed under the Cr.P.C. or

any other law in force on the grant of bail. In view of the seriousness of the offence, the law makers have consciously put such stringent restrictions

on the discretion available to the court while considering application for release of a person on bail. It is unfortunate that the provision has not been

noticed by the High Court. And it is more unfortunate that the same has not been brought to the notice of the Court.â??

17. In the face of learned counsel's contention, it is apposite to refer first the decision Hussain v. Union of India reported in 2017 (5) SCC-702. The

Hon'ble Apex court in that case considering the question as to the circumstances in which bail can be granted on the ground of delayed proceedings

when a person is in custody on the allegation of having committed offence under Section 21(c) of the Narcotics Drugs and Psychotropic Substances

Act, 1985 (the NDPS Act), has given direction as follows:â??

â??27. To sum up:

(i) The High Courts may issue directions to subordinate courts that -

(a) Bail applications be disposed of normally within one week;

(b) Magisterial trials, where accused are in custody, be normally concluded within six months and sessions trials where accused are in custody be

normally concluded within two years;

(c) Efforts be made to dispose of all cases which are five years old by the end of the year;

(d) As a supplement to Section 436A, but consistent with the spirit thereof, if an undertrial has completed period of custody in excess of the

sentence likely to be awarded if conviction is recorded such undertrial must be released on personal bond. Such an assessment must be made by the

concerned trial courts from time to time;

(e) The above timelines may be the touchstone for assessment of judicial performance in annual confidential reports.

(emphasis added)

(ii) The High Courts are requested to ensure that bail applications filed before them are decided as far as possible within one month and criminal

appeals where accused are in custody for more than five years are concluded at the earliest;

(iii) The High Courts may prepare, issue and monitor appropriate action plans for

the subordinate courts;

(iv) The High Courts may monitor steps for speedy investigation and trials on administrative and judicial side from time to time;

(v) The High Courts may take such stringent measures as may be found necessary in the light of judgment of this Court in Ex. Captain Harish

Uppal (supra).

28. Accordingly, we request the Chief Justices of all High Courts to forthwith take appropriate steps consistent with the directions of this Court

in Hussain Ara Khatoon (1995) 5 SCC 326) (supra), Akhtari Bi (Smt.) (supra), Noor Mohammed (supra), Thana Singh (supra), S.C. Legal Aid

Committee (supra), Imtiaz Ahmad (supra), Ex. Captain Harish Uppal (supra) and Resolution of Chief Justices' Conference and observations

hereinabove and to have appropriate monitoring mechanism in place on the administrative side as well as on the judicial side for speeding up disposal

of cases of undertrials pending in subordinate courts and appeals pending in the High Courts.â??â??

18. Having heard learned counsel for both sides, it is pertinent to note that the applicability of 37 of NDPS Act, and the conditions required to be

satisfied in addition to the limitations available under Section 439 Cr.P.C. are no more res integra. Hence on this score this Court is not called upon to

formulate any point for consideration. The factual aspect of each case is to be examined while going through the respective bail petitions.

19. Matter does not rest here. What is not agreed is the disagreement on point of the direction given in the Hussain decision (supra) by the Hon'ble

Supreme Court. Hence, this aspect of implementing the direction of Hon'ble supreme court in Hussain v. Union of India case while considering the

bail application u/s 37 of NDPS Act is required to be examined and for that following questions arise.

20. Whether there is a need to address the Twin conditions test as provided u/s 37 of the NDPS Act when the public prosecutor while opposing the

bail application does not attribute any fault to accused for the delay in trial referring the trial time as per the direction of Hon'ble supreme court

in Hussain v. Union of India (CrA.509/201 judgment dt.09-03-2017) to the effect that, the sessions trials where accused are in custody be normally

concluded within two years?

21. How can these two imperatives i.e. Twin conditions test as per sec-37 of the NDPS Act and conclusion of trial within two years as

per Hussain be met?

22. Plain reading of the provision under Section 37 of the NDPS Act does not postulate any ambiguity and it reads as follows-

37. Offences to be cognizable and non-bailable.-(1) notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27 A and also for offences involving

commercial quantity shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of

such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure,

1973 (2 of 1974) or any other law for the time being in force, on granting of bail.

23. It is not disputed that twin conditions test is mandatory when the bail application is opposed by the public prosecutor. Since the release of accused

coming under the cloud of sec 37 of NDPS Act is stiff, the trial is to be concluded at the earliest. Here the direction of Hon'ble supreme court

in Hussain v. Union of India to conclude trial within two years is to be carried forward.

24. The position on this context earlier to Hussain case-direction dtd.09.03.2017 needs to be encapsulated first.

25. In the case of Union of India v. Rattan Mallik @ Habul on 23 January, 2009 2009 (1) SCC-482 the Hon'ble apex court has reiterated that:

11. The broad principles which should weigh with the Court in granting bail in a non-bailable offence have been enumerated in a catena of

decisions of this Court and, therefore, for the sake of brevity, we do not propose to reiterate the same. However, when a prosecution/conviction is for

offence(s) under a special statute and that statute contains specific provisions for

dealing with matters arising there under, including an application for grant of bail, these provisions cannot be ignored while dealing with such an application. As already noted, in the present case, the respondent has been convicted and sentenced for offences under the NDPS Act and therefore, while dealing with his application for grant of bail, in addition to the broad principles to be applied in prosecution for offences under the Penal Code, 1860 the relevant provision in the said special statute in this regard had to be kept in view.

Xxx

14. We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the Court is not called upon to record a finding of "not guilty". At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the Court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail.

26. In the case of *Union of India v. Shiv Shanker Kesari*, (2007) 7 SCC 798 held as under:

"The expression used in Section 37(1)(b)(ii) is "reasonable grounds". The expression means something more than prima facie grounds. It

connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn

points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act

reasonably, knows or ought to know. It is difficult to give an exact definition of the word "reasonable".

27. Position post Hussain case may now be seen.

28. The case of Union of India v. Niyazuddin Sk. (judgment dt. 24-07-2017) reported in 2017 (4) RCR (Criminal) 644, the Hon'ble Supreme Court

has also held that:â?

â??The accusation in the present case is with regard to the fourth factor namely, commercial quantity. Be that as it may, once the Public Prosecutor

opposes the application for bail to a person accused of the enumerated offences under Section 37 of the NDPS Act, in case, the court proposes to

grant bail to such a person, two conditions are to be mandatorily satisfied in addition to the normal requirements under the provisions of the Cr.P.C. or

any other enactment. (1) The court must be satisfied that there are reasonable grounds for believing that the person is not guilty of such offence; (2)

that person is not likely to commit any offence while on bail.â??

29. Significantly though in different statute, Hon'ble Supreme Court did not show favour to twin conditions test and the rationale behind it. The said

decision reported in AIR 2017 (S.C)-5500 : (2018) 11 SCC-1 Nimesh Tarachand Shah v. Union of India on 23 November, 2017 is helpful to answer

the points posed in the case at hand. Section 45(1) of the Prevention of Money Laundering Act, 2002 has been declared unconstitutional by the

Hon'ble Supreme Court insofar as it imposes two further conditions for release on bail, as it violates Articles 14 and 21 of the Constitution of India. It

cannot be lost sight that Section 45(1) of the Prevention of Money Laundering Act, 2002, and section 37 the Narcotics Drugs and Psychotropic

Substances Act, 1985 (the NDPS Act) are in pari materia. While analyzing, the Hon'ble Supreme court has observed therein as follows -:

â??33. Also, the classification contained within the NDPS Act is completely done away with. Unequals are dealt with as if they are now equals. The

offences under the NDPS Act are classified on the basis of the quantity of narcotic drugs and psychotropic substances that the accused is found with,

which are categorized as: (1) a small quantity, as defined; (2) a quantity which is above small quantity, but below commercial quantity, as defined; and

(3) above commercial quantity, as defined. The sentences of these offences vary from 1 year for a person found with small quantity, to 10 years for a

person found with something between small and commercial quantity, and a minimum of 10 years upto 20 years when a person is found with

commercial quantity. The twin conditions specified in Section 37 of the NDPS Act

get attracted when bail is asked for only insofar as persons who have commercial quantities with them are concerned. A person found with a small quantity or with a quantity above small quantity, but below commercial quantity, punishable with a one year sentence or a 10 year sentence respectively, can apply for bail under Section 439 of the Code of Criminal Procedure without satisfying the same twin conditions as are contained in Section 45 of the 2002 Act, under Section 37 of the NDPS Act. By assimilating all these three contraventions and bracketing them together, the 2002 Act treats as equal offences which are treated as unequal by the NDPS Act itself, when it comes to imposition of the further twin conditions for grant of bail. This is yet another manifestly arbitrary and discriminatory feature of the application of Sectionâ??

30. Viewing the provision of law and precedential position reiterated from time to time, it is important to advert that the concern of the Hon'ble Apex Court for the liberty of accused and his right to speedy justice has always been expressed in unambiguous words. Right to speedy trial and twin conditions test for bail u/s 37 NDPS Act are separate but interrelated. The important one is the former because of the fact that trial time has been prescribed in Hussain v. Union of India (supra). The same is certain, predictable and is potent enough to relax to some extent the problem of pretrial detention.

31. The later one, twin conditions test as provided u/s 37 of NDPS Act, is uncertain and meant to be ascertained mostly by guess work. When release of the under trial prisoner (UTP) is associated with the result of guesswork or conjecture, the trial time assumes primacy. The contribution of UTP to cause delay in the proceeding should be an important factor within the ambit of â??oppose the applicationâ? by the public prosecutor. Twin conditions are a much higher threshold bar than any of the conditions which are ascertainable prima facie.

32. The cause and consequence of failure to address delay in trial and the contribution of UTP thereto while opposing the bail application by learned public prosecutor cannot be overlooked because the preemption of that step would draw court to the next step as to whether to make twin conditions test or not. In order to ensure the primacy of â??oppose to bail application stageâ?, the delaying factors are required to be placed in no uncertain

terms. Attribution of fault in this regard to UTP must be specific and definite. Failure to do so, may lead such objection to implicit negation of trial time

prescribed in Hussain v. Union of India (supra). In such a situation, the court may not be under any compulsion to go for twin conditions test. For

these reasons, when the public prosecutor does not oppose the bail application referring fault of the U.T.P. to cause delay in trial referring the

direction of Hon'ble Supreme Court, there is no need to go for the Twin conditions test as provided u/s 37 of the NDPS Act.

33. The imperatives of sec 37 of NDPS Act and the direction of Hon'ble the supreme court in case of Hussain v. Union of India (supra) to the

effect that, the sessions trials where accused are in custody be normally concluded within two years, can be given effect in the following manner:â?

34. While opposing the bail application, the delaying factors and fault of UTP must be placed specifically by the learned public prosecutor.

35. Where the trial as per Hussain judgment stipulation either could not have been concluded or cannot be adhered to and for such deficiency no fault

is attributed to U.T.P. while opposing bail application, the court may hesitate to make twin conditions test as provided u/s 37 of the NDPS Act.

36. In view of the above legal position drawn on analysis, let the fact of the bail petitions at hand be seen specifically for disposal.

BLAPL No. 4170 of 2017

37. In this case the petitioner, namely, Prakash Kumbhar is an accused for commission of offence under Section 20(b)(ii)(C) of NDPS Act, 1985, for

having in possession of three packets containing 14 Kg. 730gms, 25kg 570gms and 21kg 195gms of Ganja in connection with Gochhapada P.S. Case

No. 56 of 2015 corresponding to G.R. Case No. 76 of 2015 of the court of learned Sessions Judge-cum-Special Judge, Kandhamal, Phulbani.

38. Accused, Prakash Kumbhar is in custody since 21.09.2017.

39. Having regards to the quantity of contraband, I am not satisfied that accused will not commit similar type of offence after release. Hence I am

inclined to reject the bail petition. The Trial Court is directed to complete the trial within four months hence.

BLAPL No. 6464 of 2017

40. In this case the petitioner namely, Santosh Das is an accused for commission of offence under Section 20(b)(ii)(C) of NDPS Act, 1985, for having

in possession of 64Kg. of Ganja in connection with P.R. No. 37 of 2017-18 EI & EB Unit-II, Cuttack corresponding to 2(a) CC No. 11 of 2017 of the

court of learned Special Judge-cum-Sessions Judge, Cuttack.

41. Learned counsel for the petitioner submits that the accused was a passenger of a TATA ZEST Vehicle bearing Registration No. OD-01F-9446

and is in custody since 17.06.2017.

42. It is also submitted that the informant is the Investigating Officer and the trial is vitiated as per decision of Mohan Lal v. State of Punjab, (2018)

SCC OnLine SC 974. He further submits that the mandatory provision under section 42(2) of the NDPS Act has been violated as the Superior Officer

has not been informed. While opposing the bail the learned Additional Standing Counsel submits that all the mandatory provisions have been complied

with.

43. Nothing has been stated as to the delay in trial and fault of U.T.P. No criminal antecedent is shown against the accused. For the facts not disputed

by State, I am inclined to grant bail.

44. Let the accused be admitted to bail on such terms and conditions to be imposed by the learned Trial Court.

BLAPL No. 6879 of 2017

45. In this case the petitioner namely, Ramkumar Rajput is an accused for commission of offence under Section 20(b)(ii)(c) of NDPS Act, 1985, for

having in possession of 28 Kg. 700 gms. of Ganja in connection with Padwa P.S. Case No. 65 of 2017 corresponding to T.R. No. 12 of 2017 of the

court of learned Addl. Sessions Judge-cum-Special Judge, Koraput.

46. Learned counsel for the petitioner submits that three bags were seized containing contraband Ganja about 28 Kg and the number of passengers in

the car were 5 and for that it cannot be said that the petitioner was in possession of contraband article more than commercial quantity.

47. Further it is stated that the petitioner is in custody since 28.07.2017 and trial has not yet been concluded. Added to that he submits that, the

mandatory provisions for search and seizure are not followed.

48. Learned Additional Standing Counsel opposes the bail stating that the mandatory provisions have been complied with and seized article is more

than commercial quantity.

49. Nothing is stated about delay in trial and the fault of U.T.P. No criminal antecedent of the petitioner is shown. Hence I am satisfied that the petitioner will not likely to commit any offence after release on bail.

50. Having regards to the above facts and custody period, I am inclined to release the accused on bail.

51. Let the accused be admitted to bail on such terms and conditions to be imposed by the learned Trial Court.

BLAPL No. 8478 of 2017

52. In this case the petitioner namely, Ananta Das is an accused for commission of offence under Section 20(b)(ii)(C) of NDPS Act, 1985, for having in possession of 20Kg. 100Gms. of Ganja in connection with P.R. No. 53 of 2017-18 of S.I. of Excise, District Mobile Squad, Angul corresponding to Special (NDPS) Case No. 13 of 2017 of the court of learned Special Judge, Angul.

53. Learned counsel for the petitioner submits that the seized quantity of contraband article is 20 Kg. 100gms for which the accused is in custody since 21.09.2017 and the informant of this case is the Investigating Officer for which trial is vitiated as per decision of Hon'ble Supreme Court in Mohan Lal v. State of Punjab, (2018) SCC OnLine SC 974. Further it is submitted that the mandatory provision under section 50 of the NDPS Act has not been complied with.

54. Learned Addl. Government Advocate opposes the bail stating that the seized contraband Ganja is 21 Kg. 100 gms. and the mandatory provisions have been complied with and there is no instruction about the cause of delay in trial.

55. Having regards to the above fact and custody period the petitioner is entitled to bail.

56. Let the accused be admitted to bail on such terms and conditions to be imposed by the learned Trial Court.

BLAPL No. 5353 of 2017

57. In this case the petitioner namely, Gouranga Meher is an accused for commission of offence under Section 20(b)(ii)(c) of NDPS Act, 1985, for having in possession of 22 Kg. 150 Gms. of Ganja in connection with Dhama P.S. Case No. 83 of 2017 corresponding to T.R. Case No. 62 of 2017 of the court of learned Sessions Judge-cum-Special Judge, Sambalpur.

58. The learned Additional Standing Counsel opposes the bail application stating that the seized contraband Ganja involves commercial quantity and all

the mandatory provisions required under the NDPS Act have been complied with.

59. Accused is in custody since 21.06.2017. Nothing has been stated about delay in trial. No criminal antecedent of petitioner is brought to the notice

of the Court.

60. Having regards to the material placed, I am satisfied that the petitioner is not likely to commit any offence while on bail and prima facie is not

guilty of offence. Hence, he is entitled to be released on bail.

61. Let the accused be admitted to bail on such terms and conditions to be imposed by the learned Trial Court.

BLAPL No. 8548 of 2017

62. In this case the petitioner namely, Sumanta Khatua is an accused for commission of offence under Section 20(b)(ii)(c) of NDPS Act, 1985 in

connection with Boudh P.R. Case No. 11 of 2017 corresponding to 2(a) CC No. 3 of 2017 of the court of learned Special Judge, Boudh.

63. It is submitted by learned counsel for the petitioner that the accused-petitioner is in custody since 09.10.2017 and has been prejudiced as the

informant is the Investigating Officer of this case. Further it is submitted that the mandatory provision under section 55 and 57 of NDPS Act are not

complied with and relying upon the decision of the case of Mohan Lal v. State of Punjab reported in 2018 SCC OnLine SC 974 and persuaded the

court to take a view that the chance of conviction of accused is remote.

64. Learned Additional Government Advocate opposes the bail stating that the investigation by the informant is not prejudicial and for that no adverse

view can be taken against the prosecution. Further it is also contended that though the stage of trial is not known the mandatory provision under

sections 55 and 57 are complied with and for that the accused is not to be benefited.

65. In view of the Three Judge Bench decision of Hon'ble Supreme Court in Mohan Lal case (supra), prejudice has already been caused to face fair

trial. No criminal antecedent is shown for which I am satisfied that the petitioner is not likely to commit any offence while on bail.

66. Regards being had to the above facts, I am inclined to grant bail to the petitioner.

67. Let the accused be admitted to bail on such terms and conditions to be imposed by the learned Trial Court.

BLAPL No. 2354 of 2018

68. In this case the petitioner namely, Mana Sahu is an accused for commission of offence under Section 20(b)(ii)(c) of NDPS Act, 1985, for having

in possession of 145 Kg. 320 gms. of Ganja in connection with Kantamala P.S. Case No. 43 of 2014 corresponding to C.T. Case No. 195 of 2014 of

the court of learned Addl. District & Sessions Judge-cum-Special Judge, Boudh vide Special Case (NDPS Act) No. 1/2014(T).

69. Learned counsel for the petitioner submits that the accused-petitioner is in custody since 29.05.2014. 145Kg. 320Gms of Ganja was seized from

the house, but not from the conscious possession of the accused. It is stated that accused is 72 years old and trial is yet to be completed. Learned

counsel for the petitioner also referring the deposition of P.W.1-A.S.I. of Kantamal Police Station submits that while seizure of contraband article was

made from the veranda of the house, the accused was found in the backside of the house but the occupants of the house were lady members and

children.

70. Learned Additional Government Advocate opposes the bail stating that the last date to record the evidence by the lower court was 3.9.2018. With

regards to possession of contraband article by the accused, it is stated that the house from where the seizure was made belonged to the accused-

petitioner.

71. No criminal antecedent is shown against the accused. Learned Additional Government Advocate is unable to attribute any fault to the petitioner

for the delay in trial since 29.5.2014.

72. Having regards to the age of the petitioner and custody period, I am inclined to admit the petitioner on bail.

73. Let the accused be admitted to bail on such terms and conditions to be imposed by the learned Trial Court.

BLAPL No. 2672 of 2018

74. In this case the petitioner namely, Balu Khilla is an accused for commission of offence under Section 20(b)(ii)(c) of NDPS Act, 1985, for having in

possession of 76 Kg. 830 gms. of Ganja in connection with Padwa P.S. Case No. 03 of 2017 corresponding to T.R. Case No. 01 of 2017 of the court

of learned Addl. Sessions Judge-cum-Special Judge, Koraput.

75. Heard learned counsel for the petitioner and learned Additional Government Advocate for the State.

76. The report of Additional District & Sessions Judge-cum-Special Judge, Koraput dated 5.12.2018 reveals that the Commission was appointed to

examine one official witness and the date was fixed awaiting Commission Report. It is also reported therein that the case is likely to be disposed of by

the end of April, 2019.

77. Both the learned counsel for the petitioner and learned AGA stated to have no information about further development in the trial.

78. Learned counsel for the petitioner submits that the accused-petitioner was a passenger in the Auto Rickshaw and is in custody since 6.1.2017 and

there is no antecedent against him. He further referring substantial evidence of one Bhakta Muduli-P.W.4 stated that in the Auto, seven passengers

were available.

79. Regards being had to the report of learned trial court that trial is to be completed by April, 2019, I am not inclined to grant bail to the petitioner.

The trial court is directed to expedite trial. The petitioner is at liberty to renew the bail prayer if trial is not completed by the end of April, 2019.

BLAPL No. 2674 of 2018

80. In this case the petitioner namely, Santosh Golory is an accused for commission of offence under Section 20(b)(ii)(c)/29 of NDPS Act, 1985, for

having three nos. of polythene bags containing 60 Kg. 320 Gms. of Ganja in connection with Nandapur P.S. Case No. 97 of 2017 corresponding to

T.R. Case No. 17 of 2017 of the court of learned Addl. Sessions Judge-cum-Special Judge, Koraput.

81. Learned counsel for the petitioner submits that the accused-petitioner is in custody since 13.9.2017 and trial has not yet been completed and he

was one of the passengers in Toyota Qualis vehicle bearing Registration No. CH-04-1885. Learned counsel for the petitioner further submits that no

independent witness was present at the time of seizure.

82. Learned AGA opposes the bail stating that this accused-petitioner is involved in another NDPS case and he was an occupant of the vehicle from

which seizure of 61 Kgs of Ganja was made.

83. In view of the involvement of the petitioner in another NDPS case, the commission of this type of offence by him after release is not ruled out.

Hence I am not inclined to grant bail.

84. Accordingly the bail petition stands rejected.

85. The learned Trial Court is directed to expedite the trial keeping in view the guideline of the Hon'ble Supreme Court in the case

of Hussain v. Union of India, 2017 (5) SCC 702.