
(2018) 04 OHC CK 0085
In the Orissa High Court
Case No : BLAPL NO. 2353 Of 2018

Rama Chandra Hansdah

APPELLANT

Vs

Republic of India C.B.I

RESPONDENT

Date of Decision : 20-04-2018

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(2), 13(1)(d)(iii)
Code of Criminal Procedure, 1973 — Section 436A
Indian Penal Code, 1860 — Section 409, 420, 467
Constitution of India, 1950 — Article 21

Citation : (2018) 04 OHC CK 0085

Hon'ble Judges : S.K. SAHOO

Bench : Single Bench

Advocate : Jagannath Patnaik, Kali Charan Mishra

Final Decision : Dismissed

Judgement

S. K. SAHOO, J.Â

I shall start from where I had left. For the fifth time, the petitioner Rama Chandra Hansdah who is an elected member to the 16th Lok Sabha from

Mayurbhanj Constituency in Odisha has knocked at the portals of this Court seeking for bail in connection with T.R. No.1 of 2018 pending in the Court

of Special Judge, CBI, Court No.I, Bhubaneswar which arises out of R.C. No. 50(S) of 2014 after four unsuccessful journeys to this Court and equal

numbers of unsuccessful approach to the Honâ??ble Supreme Court.

While rejecting the earlier application for bail of the petitioner in BLAPL No.1654 of 2017 vide order dated 31.07.2017, I had observed that corruption

is such a contagious disease that it might affect any person and at any point of time. It requires a lot of mental strength, sacrifice, detachment and

continuous effort to avoid such disease. Like an unending thirst for human blood by a tiger, a corrupted person is never satisfied with the wealth he

has amassed. He becomes blind to all kinds of ethics, rule of law, societal obligation and becomes self-centric. He fails to learn the lesson from the

replies given by the family members of Dasyu Ratnakar when he enquired from them if they would receive some portions of his vices which he had

done for their maintenance. He fails to remember the last wishes of the great Greek King Alexander to put his hands outside the coffin to let people

understand that he came to this world in empty hands and he will leave this world also in empty hands. A man having clean mind and strong character

can fight corruption. The petitioner in the earlier bail application was given liberty to renew his prayer for bail before the learned trial Court after

examination of eighteen witnesses as per list submitted by C.B.I. who had implicated the petitioner. The learned trial Court was directed to expedite

the trial and conduct the trial on day-to-day basis and to make every endeavour to conclude the trial by end of December 2017. Against the rejection

order dated 31.07.2017 passed in BLAPL No.1654 of 2017, the petitioner approached the Honâ??ble Supreme Court in Special Leave to Appeal

(Crl.) No.7469 of 2017 which was dismissed on merits vide order dated 11.10.2017.

The petitioner moved again for bail before the learned Special Judge, C.B.I., Court No.I, Bhubaneswar in T.R. 1 of 2018 which was rejected as per

order dated 27.01.2018. Against such rejection order, the petitioner directly approached the Honâ??ble Supreme Court in Writ Petition (s) (Criminal)

No(s). 39/2018 and the Honâ??ble Supreme Court disposed of the writ petition vide order dated 02.04.2018 with observation that in the first instance,

the petitioner should approach the High Court with bail application and once such application is filed, the same shall be considered by the High Court

forthwith. That is how this bail Mr. Avijit Patnaik, learned counsel appearing for the petitioner, with all the wits at his command contended that after

the rejection of the last bail application of the petitioner by this Court, as per the direction of this Court, out of eighteen witnesses as per list supplied by

the learned counsel for the C.B.I., sixteen witnesses have already been examined and knowing full well that the petitioner may renew his prayer for

bail in terms of the order passed in BLAPL No.1654 of 2017 as the trial was not concluded by the end of December 2017, an additional charge sheet

was submitted on 29.12.2017 including the offence under section 13(2) read with section 13(1)(d)(iii) of the Prevention of Corruption Act, 1988

(hereafter "1988 Act") in the Court of learned Special Judge, C.B.I., Bhubaneswar against the petitioner as a result of which the trial of the

case was transferred from the Court of learned Special C.J.M., CBI, Bhubaneswar to the Special Judge, CBI, Court No.I, Bhubaneswar and

accordingly T.R. 1 of 2018 was registered. It is further contended that after rejection of the earlier bail application of the petitioner in BLAPL

No.1654 of 2017, coaccused Subarna Naik was released on bail in BLAPL No.2106 of 2017 as per order dated 09.08.2017 of this Court and similarly

co-accused Hitesh Kumar Bagarti was released on bail in BLAPL No.5773 of 2017 as per order dated 31.10.2017 of this Court. It is further

contended that deliberately additional charge sheet has been submitted at the fag end of the stipulated period just to deprive the petitioner being

released on bail. It is further contended that there is absolutely no material so as to constitute the ingredients of offence under section 13(2) read with

section 13(1)(d)(iii) of the 1988 Act.

It is further contended that section 436-A of Cr.P.C. stipulates the maximum period for which an undertrial prisoner can be detained and it is

enumerated therein that if a person has already undergone detention for a period extending up to one-half of the maximum period of imprisonment

specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties. It is contended that since two

of the co-accused persons similarly situated have been convicted pleading guilty and sentenced to undergo R.I. for three years with fine, in the event

the petitioner is also found guilty of such offences, he will be sentenced to similar imprisonment and the petitioner in judicial custody since 04.11.2014

and therefore, he has already undergone the sentence likely to be awarded if conviction is recorded. Learned counsel placed reliance on a decision of

the Honâble Supreme Court in case of Hussain and another -Vrs.- Union of India reported in (2017) 5 Supreme Court Cases 702. It is further

contended that since the apprehension of tampering with the evidence has already ended due to examination of sixteen witnesses out of the list of

eighteen witnesses earlier given by the C.B.I. and the C.B.I. is delaying the disposal of the trial, the petitioner should be released on bail.

Mr. Kali Charan Mishra, learned counsel appearing for the C.B.I. on the other hand contended that even though the trial has commenced, further

investigation was under progress and during such investigation, it was found out that the petitioner, co-accused Subarna Naik and Hitesh Kumar

Bagarti who were the members of Legislative Assembly (MLA), Odisha during relevant period and while holding office as public servants obtained

pecuniary advantage without any public interest and therefore, they are liable for commission of offences under section 13(2) read with section 13(1)

(d)(iii) of the 1988 Act. Learned counsel for the C.B.I. filed the copy of the additional charge sheet and additional list of forty five witnesses and

submitted that out of the additional list of witnesses, witness Gadadhar Senapaty (C.W.16), Akshaya Kumar Gochhayat (C.W.22), Prasanna Kumar

Nayak (C.W.25), Abhimanyu Das (C.W.26) and Rakesh Kumar Jha (C.W.31) have stated specifically against the petitioner's involvement in the

crime.

He further contended that out of the eighteen witnesses as per list given during the hearing of the earlier bail application in BLAPL No.1654 of 2017,

sixteen witnesses have been examined and the other two witnesses namely Golak Chandra Martha and D. Sahoo could not be examined, as witness

Golak Chandra Martha took time on the ground of his ailment and Public Prosecutor filed a petition to defer the examination of witness D. Sahoo after

examination of some more witnesses to maintain sequence of events. It is contended that the maximum punishment prescribed for the offence under

section 13(2) read with section 13(1)(d)(iii) of the 1988 Act under which the additional charge sheet was submitted is ten years and the petitioner has

not undergone one-half of the maximum punishment prescribed for such offence and therefore, he cannot claim the benefit under section 436-A of

Cr.P.C. It is further contended that since during course of further investigation, some more materials came out against the petitioner, some more

offences were added and some more witnesses are also required to be examined during trial and the circumstances are more incriminating and there

is every possibility of tampering with the evidence of the newly charge sheeted witnesses as per the additional charge sheet and therefore, the release

of the co-accused persons on bail or conviction of some of the co-accused persons with sentence of R.I. for three years cannot be a ground to

enlarge the petitioner on bail.

There is no dispute that even a single day delay in release of an undertrial prisoner who is entitled to be released as per section 436-A of Cr.P.C. will

amount to serious violation of his right to life under Article 21 of the Constitution of India and every endeavour is to be made by the authorities to

prevent breach of Article 21 of the Constitution of India by implementation of section 436-A of Cr.P.C. It is also the settled principle of law that

speedy trial is a fundamental right implicit in the broad sweep and content of Article 21 of the Constitution of India and if a person is deprived of his

liberty under a procedure which is not reasonable, fair, or just, such deprivation would be violative of his fundamental right under Article 21 of the

Constitution of India. Section 436-A Cr.P.C. is a benevolent provision which is incorporated by the legislature with a view to ameliorate the conditions

of the under trials who are languishing in jail for a long period of time having undergone more than half of the sentence which the offence carries. The

said provision cannot be interpreted in a manner so as to deprive the benefit of such beneficial legislation to the under trial. In case of Hussain and

another (supra) which was placed by the learned counsel for the petitioner, it is held that as a supplement to section 436-A of Cr.P.C. 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.

In the present case, if the offences under which charge sheet is submitted is taken into consideration, it will be seen that offence under section 409 of

the Indian Penal Code carries punishment for imprisonment for life, or with imprisonment of either description for a term which may extend to ten

years, and shall also be liable to fine. Section 420 of the Indian Penal Code carries punishment upto seven years and also fine. Section 467 of the

Indian Penal Code carries punishment for imprisonment for life, or with imprisonment of either description for a term which may extend to ten years,

and shall also be liable to fine. Section 13(2) read with section 13(1)(d)(iii) of 1988 Act prescribes punishment for imprisonment which shall not be less

than four years but which may extend to ten years and shall also be liable to fine. Therefore, I am of the humble view that since the petitioner has not

undergone one-half of the maximum period of imprisonment prescribed for all

these aforesaid offences, he cannot claim benefit under section 436-A of Cr.P.C. It cannot also be said that if conviction is recorded, the petitioner is likely to be awarded with a sentence of R.I. for three years which was imposed on two of the co-accused persons who pleaded guilty. Those two co-accused persons were not found guilty under section 13(2) read with section 13(1)(d)(iii) of 1988 Act under which the additional charge sheet is filed and the petitioner is likely to face trial for such offence. Therefore, the ratio laid down in case of Hussain and another (supra) is not applicable to the petitioner and accordingly, the contention of the learned counsel for the petitioner that the petitioner is entitled to be released on bail in view of section 436-A of Cr.P.C. is misconceived and accordingly turned down.

The further contention of the learned counsel for the petitioner that the C.B.I. is delaying the disposal of the trial is also not acceptable inasmuch as steps were taken to examine sixteen witnesses out of the list of eighteen witnesses which was given in the earlier bail application. Whether the ingredients of the offence under section 13(2) read with 13(1)(d)(iii) of 1988 Act are attracted or not, the same has to be adjudicated if appropriate application is filed challenging the submission of additional charge sheet for such offence. While dealing with an application for bail, it would not be proper to make any observation in that respect. The additional charge sheet has been submitted as C.B.I. found some more materials against the petitioner during course of further investigation and some more offences were added in the charge sheet and a fresh list of 45 witnesses were submitted, out of which five witnesses have attributed specific role played by the petitioner in the crime. Therefore, it cannot be said that filing of additional charge sheet is just a deliberate attempt by the C.B.I. to frustrate the right of the petitioner to be released on bail.

Even though two of the co-accused persons namely Subarna Nayak and Hitesh Kumar Bagarti have been released on bail by this Court after rejection of the earlier bail application of the petitioner in BLAPL No.1654 of 2017 but since the accusation against the petitioner is more serious in nature, he cannot claim parity with those two co-accused persons. Moreover parity cannot be a sole ground but is one of the grounds for consideration of the question of bail. The principle of grant of bail on parity cannot be allowed to be carried to an absurd or illogical conclusion so as to put a Judge

in tight and strait jacket to grant bail automatically. In my humble opinion, there is no substantial change in the circumstances or any fresh grounds for

reconsideration of the prayer for bail, after the rejection of the earlier bail application which was also approved by the Honâ??ble Supreme Court.

The nature and gravity of the accusation, the nature of supporting evidence, its serious adverse impact on the fabric of the society, misappropriation of

huge amount of public money, the severity of punishment in case of conviction, the reasonable apprehension of the prosecution relating to the

magnitude of influence the petitioner is likely to cause once he is released from jail custody by taking over the task of tampering with the evidence and

manipulating witnesses and the fact that some more important witnesses as per the additional charge sheet who have implicated the petitioner are to

be examined in the trial Court, it would not be proper to release the petitioner on bail.

Since as per the additional charge sheet, five witnesses namely, Gadadhar Senapati (C.W.16), Akshaya Kumar Gochhayat (C.W.22), Prasanna

Kumar Nayak (C.W.25), Abhimanyu Das (C.W.26) and Rakesh Kumar Jha (C.W.31) who according to the learned counsel for the C.B.I. have

implicated the petitioner in the commission of the crime are material witnesses, learned trial Court shall take expeditious step for examination of the

aforesaid five witnesses at the first instance apart from examining the two left out witnesses namely, Golak Chandra Martha and D. Sahoo as per the

earlier list submitted by the CBI. After the examination of those witnesses, the petitioner may renew his prayer for bail before the trial Court which

would be considered in accordance with law. It is submitted by the learned counsel for the petitioner that no Presiding Officer has been posted as

Special Judge, CBI, Court No.I, Bhubaneswar since September 2016 and therefore, even though additional charge sheet was placed before the said

Court on 29.12.2017, there is no further progress in trial. In view of such submission, if no Presiding Officer is posted within four weeks from today,

the petitioner is at liberty to move appropriate application for transfer of the case to any other Court of Special Judge, CBI, Bhubaneswar for trial.

Accordingly, the bail application sans merit and hence stands rejected.