

A.F.R.



IN THE HIGH COURT OF ORISSA AT CUTTACK
BLAPL NO.2876 of 2024

(In the matter of application under Section 483 of the BNSS).

Basanta Kumar Behera ... ***Petitioner***
-versus-

State of Odisha ... ***Opposite Party***

For Petitioner : ***Mr. A. Mishra, Advocate***

For Opposite Party : ***Mr. P. Satpathy, Addl. PP***

CORAM:

JUSTICE G. SATAPATHY

DATE OF HEARING & DATE OF JUDGMENT:01.07.2025 (ORAL)

G. Satapathy, J.

1. This is a bail application U/S.439 of CrPC by the petitioners for grant of bail in connection with CID, Crime Branch, Cuttack PS Case No.14 of 2021 arising out of ST Case No.62 of 2022 for commission of offences punishable U/Ss. 120-B/121/121-A/34 of the IPC r/w Sections 3/4/5 of the Official Secrets Act pending in the Court of learned 3rd Addl. Sessions Judge, Balasore, on the main allegation of passing out classified secret information relating to Integrated Test Range(ITR),



Chandipur to Foreign Nationals with regard to Missile Testing, at the cost of safety and security of the Country.

2. In the course of hearing, Mr. Ashutosh Mishra, learned counsel for the Petitioner submits that although there is allegation against the petitioner for passing out secret information of ITR, but such allegation has never been established either during investigation or in the trial and right now trial having already commenced, but the IIC, Chandipur PS-cum-PW1 has not specifically stated in evidence the role as alleged against the Petitioner, rather PW1 has admitted in the cross-examination that there was no material to arrest the Petitioner except the FIR on the date of arrest of the Petitioner and thereby, the arrest and detention of the Petitioner is unlawful. It is further submitted by Mr. Mishra that PW1 has never stated anything about any transaction made by the Petitioner for receiving Rs. 30,000/- and the incriminating materials as collected by the IO being limited to recovery some photographs and screenshots, no case is in fact made out against the Petitioner for sharing any defence secrets and co-accused standing on similar footing having already



been granted bail, but the Petitioner being custody since 15.09.2021 with little days remaining to complete four years in custody without trial being concluded, the Petitioner, therefore, may kindly be granted bail at least on the ground of delay in disposal of the case.

2.1. On the contrary, Mr. P. Satpathy, learned Additional Public Prosecutor, however, strongly opposes the bail application of the Petitioner by inter-alia contending that the conduct of the Petitioner is not above board and he on an allurement for payment of some amount of money and lust has made friendship with some ladies and has passed secret information of ITR at the stake of safety and security of the Country and there being prima facie materials against the Petitioner and trial being going on, it would not be in the interest of justice to grant bail to the Petitioner, especially when there is material to indicate that the Petitioner has received Rs. 14,000/- & Rs. 24,000/- on two separate occasions in his account from one of such girl namely Yanika Yadav who is stated to be a Pakistan National. Mr. Satpathy under



aforesaid submissions prays to reject the bail application of the Petitioner.

3. After having considered the rival submissions upon perusal of the record, there appears some allegation against the Petitioner for passing out secret information to Yanika Yadav, but what was exact information has not been revealed till today, although it is claimed that some screenshots of chatting of Facebook account of the Petitioner has been collected by the Investigating Agency. Besides, the Petitioner is in custody since 15.09.2021, but the trial is yet to be concluded and in the meantime, around 19 out of 28 charge sheeted witnesses have been examined as on 20.05.2025. Right to speedy trial is the fundamental right of an accused as guaranteed under Article 21 of the Constitution of India. The learned trial Court has of course taken into account the evidence of PW11 for finding prima facie case against the Petitioner, but fact remains that PW11 has narrated about confession of the Petitioner before Police in his evidence which has been taken into account by the learned trial Court in refusing to grant bail to the petitioner, but



confession of accused before Police is inadmissible in the eye of law. It is also found from the record that some Mobile Phones have been recovered from the Petitioner and co-accused, but no forensic evidence has yet been revealed in this regard. No doubt, the allegation leveled against the Petitioner is serious, but no procedure which does not ensure speedy trial can be regarded as fair trial, however, bail cannot be refused merely on the gravity of the allegation when the accused has suffered substantial period in custody. In this context, this Court reminds itself to the principle laid down by the Apex Court in ***Union of India Vrs. K.A. Najeeb; (2021) 3 SCC 713***, wherein a three Judge Bench of the Apex court after considering the the long incarceration and the effect of Section 43(D)(5) of the UAP Act has observed the following at paragraph 17 which reads as under:-

*"17. It is thus clear to us that the presence of statutory restrictions like **Section 43D (5) of UAPA per se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution**. Indeed, both the restrictions under a Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, Courts are*



*expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down **where there is no likelihood of trial being completed within a reasonable time** and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial."*

4. It is, however, true that the extent of time which can be regarded as delay in trial, has not been laid down in the statute book, but it is to be reminded here that the Court has onerous duty to think by taking into consideration the incarceration of the prisoner to conclude that what would be the time required for conclusion of trial. No matter howsoever serious a crime may be, but the accused has the right to a speedy trial as guaranteed under Article 21 of the Constitution of India. It is also settled principle of law that bail should not be withheld as a punitive measure nor is it to be confused with acquittal of the person accused of offence, rather bail is release of the accused from custody pending adjudication of the trial and to maintain the dignity of



right to life and liberty of a person. Although an accused is charged with an offence, but he is not a convict until conclusion of the trial, since the accused has valuable far-reaching rights under criminal jurisprudence to be presumed innocent, until proven guilty and this right cannot be brushed aside lightly, howsoever stringent the penal law may be.

5. Granting bail to a person accused of an offence in a criminal case would only mean to provide him to secure his liberty till the trial is concluded, but if such person accused of offence is found guilty at the trial, he can certainly be taken into custody, subject to the provisions of the appeal. Article 21 of the Constitution of India provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law and thereby, the personal liberty of a person can be curtailed in accordance with the procedure established by law, but fact remains that when the State or the complainant get a person accused of offence to be taken into custody, it is the obligation of the State or the complainant, as the case may be, to proceed with such



criminal case with reasonable promptitude irrespective of whether the accused demands for speedy trial or not inasmuch as it is for the State or the complainant, the accused has been taken into custody, but if the accused is subsequently acquitted of the charge, his sufferings in jail cannot be obviated nor he can be restored to the position ante, because such sufferings of the person is irreversible and, therefore, endeavors should be made to provide speedy trial to the accused detained in custody. Besides, neither the Court nor any one can be permitted to take the plea that since the accused did not demand for early hearing in the matter, he was not provided with speedy trial. Under no circumstances a person accused of an offence can be denied the right to a speedy trial only because he had not complained of infringement of his right to speedy trial nor has insisted upon such speedy trial. A trial can be said to be reasonable, fair or just, if the liberty of the person is maintained in accordance with principles of law, since no person can be deprived of his personal liberty except according to procedure established by law.



6. The primary object of bail is to secure the attendance of the accused at the trial which can be tested by answering the question, whether the accused will probably appear to attend his trial and unless, there is circumstance to indicate that the accused will avoid the process of law, bail should not ordinarily be refused subject to procedure established by law. In this case, it is not in dispute that the Petitioner has availed interim bail on two occasions and he has not reported to have misused such concession granted to him. Further, the Court while conducting trial should not forget the mandate of Sec. 309 of the CrPC/346 of BNSS which prescribes that in every inquiry or trial, the proceedings shall be held **as expeditiously as possible** and shall also be continued from **day-to-day basis, until all the witnesses in attendance have been examined** and unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded. If the State is unable to provide speedy trial to the accused, it should not oppose the plea of bail of such accused on the ground that the crime committed by



him is serious one, since Article 21 of the Constitution of India applies irrespective of the nature and gravity of the crime.

7. In view of the discussion made in the foregoing paragraphs and the principle laid down by the Apex Court in the decision referred to above and keeping in view the nature and gravity of the offences as alleged against the petitioner on the face of allegation leveled against him and the materials collected by the Investigating Agency in support of such allegations and taking into account the extent to which the prosecution has led evidence through the witnesses in the trial and considering the conduct of the Petitioner in not misusing the liberty or concession so granted to him in the form of interim bail and regard being had to the pre trial detention of the Petitioner, who was a contractual AC Operator at ITR at the relevant time, in custody for little short of four years with trial having not completed and balancing these factors on the face of the rival submissions, this Court by taking into account grant of bail to co-accused Sachin Kumar Chhata



and Tapas Ranjan Nayak considers that the Petitioner has made out a case for grant of bail.

8. Hence, the bail application of the Petitioner stands allowed and he is allowed to go on bail on furnishing bail bonds of Rs.5,00,000/- (Rupees Five Lakhs) only with two solvent sureties for the like amount to the satisfaction of the learned Court in seisin of the case on such terms and conditions as deem fit and proper by it with following conditions:-

(i) the petitioner shall not commit any offence while on bail,

*(ii) the petitioner in the course of trial shall attend the trial Court on each date of posting without fail unless his attendance is dispensed with. **In case the Petitioner fails without sufficient cause to appear in the Court in accordance with the terms of the bail, the learned trial Court may proceed against the Petitioner for offence U/S.269 of BNS,2023 in accordance with law,***

(iii) the petitioner shall not leave the territorial jurisdiction of the trial Court without prior permission till disposal of the case by intimating his present address of stay to the concerned Court,



(iv) the Petitioner shall inform the Court as well as the Investigating Agency as to his place of residence during the trial by providing his mobile number(s), residential address, e-mail, if any, and other documents in support of proof of his residence. The Petitioner shall not change his address of residence without intimating to the Court and Investigating Agency,

(v) in case the Petitioner misuses the liberty of bail and in order to secure his presence, proclamation U/S.84 of BNSS, 2023 is issued and the Petitioner fails to appear before the Court on the date fixed in such proclamation, then, the learned trial Court is at liberty to initiate proceeding against him for offence U/S.209 of BNS, 2023 in accordance with law.

(vi) the petitioner shall report attendance before the jurisdictional Police Station once in a fortnight preferably on Sunday of each month in between 10 A.M. to 12 Noon for six (06) months from the actual date of release from the custody.

The IIC of jurisdictional Police Station shall not detain the petitioner unnecessarily after recording his attendance beyond the time as stipulated.

It is clarified that the Court in seisin of the case will be at liberty to cancel the bail of the petitioner without further reference to this Court, if any of the



above conditions are violated or a case for cancellation of bail is otherwise made out. In the wake of aforesaid, the subsequent involvement of the petitioner in future for a grave/similar offence on prima facie accusations may be treated as a ground for cancellation of bail in this case.

9. Accordingly, the BLAPL stands disposed of.

10 Issue urgent certified copy of the order as per Rules.

(G. Satapathy)
Judge

*Orissa High Court, Cuttack,
Dated the 1st day of July, 2025/Priyajit*