

C.R.DASH, J.

BLAPL NO.12834 OF 2009. (Decided on 27.01. 2010.)

DHANI @ SANJIBA BEHERA

..... Petitioner

-V-

STATE OF ORISSA

..... Opp.Party.

CRIMINAL PROCEDURE CODE, 1973 (ACT NO.2 OF 1974) – SEC.439.

For Petitioner -M/S. Bijan Ray

For Opp.Party - Addl.Govt.Advocate

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1. Heard.
 2. The petitioner has been implicated in the offence punishable under Sections 20(b) (ii) (c) and 25 of the N.D.P.S. Act, on the basis of allegation that he along with some other co-accused persons were found in possession of 23 Kgs. Of ganja, which is of commercial quantity according to the Notification issued by the appropriate Government.
 3. The present petitioner has earlier moved this Court for bail. While rejecting the prayer for bail, this Court had directed the trial court to complete the trial expeditiously within four months, as submitted by Mr.Bijan Ray, learned senior counsel appearing for the petitioner. That order was passed on 07.07.2009 and, according to Mr.Ray, trial in the case has not yet been completed.
 4. A report, therefore, was called for from the Trial Court. Learned Trial Court has reported that the order dated 07.07.2009 passed in BLAPL. No.591 of 2009 having not been communicated, the trial could not be taken up and completed as per the direction.
 5. Mr. Bijan Ray, learned senior counsel makes the motion to release the petitioner on bail on the following grounds-
 - (i) Assuming aurgendo the petitioner to be a passenger in the car, from which the aforesaid quantity of ganja was seized, the petitioner can not prima facie be held liable for possession of the entire quantity of ganja, which is of commercial quantity, because there was other co-accused persons in the car and if the quantity of ganja seized from the car is apportioned among all the accused persons, the petitioner can be held to have been in possession of ganja, which is lesser than the commercial quantity;
 - (ii) Even if the Magistrate was present, confessional statement of the petitioner has not been recorded in presence of the said Magistrate, and despite motion by the Investigating Officer for recording the confession of the petitioner under Section 164, Cr.P.C., as he wanted to plead his guilt, his statement under Section 164, Cr.P.C. has not been recorded.
 - (iii) As it was earlier directed by this Court to complete the trial within four months, the trial should have been completed within the time stipulated and the justification by the trial court in the report called for to the effect that the aforesaid order of this Court was not communicated and none of the parties filed a copy of the order so as to bring to the knowledge of the trial court about the target fixed, should not be taken lightly to penalize the petitioner; and
 - (iv) There is nothing on record to connect the present petitioner with the offence alleged.

6. Learned Addl. Govt. Advocate on the other hand takes me through the statement of one Durga Prasad Mishra, recorded under Section 161 Cr.P.C., which clearly shows that the petitioner was apprehended by the police officials while he was fleeing from the car, from which the ganja was recovered, after the car was stopped on being signalled by the police officials. Further, it is found from the statement that the seized ganja was kept in the space near the back seat of the car. The aforesaid facts make it prima facie clear that the petitioner had full knowledge about transit of ganja in the car, and with such knowledge he was travelling in the car, and thus he can be prima facie held to be in possession of the ganja seized.

7. Coming to the question of apportionment of the quantity of ganja seized from the car, the contention raised by Mr.Ray, learned senior counsel, does not commend to me inasmuch as all the persons in the car had knowledge about transit of ganja in the car and the liability of conjoint complicity can prima facie be fastened against all of them.

8. So far as non-recording of statement of the petitioner under Section 164 Cr.P.C. is concerned, it is found from the copy of the letter of the Investigating Officer produced by Mr.Ray, learned senior advocate, that the I.O. had moved the Court for recording of the statement of the petitioner under Section 164, Cr.P.C. , as he wanted to plead guilty. Except the aforesaid letter there is nothing on record as to whether the Court has been moved to record the confession of the petitioner under Section 164, Cr.P.C., as to which Court was moved for such purpose, as to under what ground such statement was not recorded, if at all any Court was moved. It is well settled in law that Section 164, Cr.P.C. gives a wide discretion to the Magistrate to record or not to record confessional statement under Section 164, Cr.P.C., but such discretion should be exercised judiciously. This proceeding in absence of all the aforesaid materials can not be a proper proceeding to question or to probe into the legality or otherwise of the action of the Court in non-recording of the confessional statement of the present petitioner (as alleged by Mr.Ray, learned senior counsel). Further, non-recording of plea of guilty of the petitioner purported to have been sponsored by the I.O.may not entitle the petitioner for release on bail.

7. So far as non-disposal of the case by the target fixed by this Court vide order dated 07.07.2009 passed in BLAPL NO.591 of 2009 is concerned, learned Court below has reported that the copy of the order was not filed before it to bring to its knowledge about the target fixed. Mr. Ray, learned senior counsel, with all the vehemence submits that the petitioner should not suffer for the fault on the part of the Registry of this Court, which has failed to communicate the order to the trial court so as to complete the trial within the period targeted. Fact remains that when this Court has refused to exercise discretion to release the petitioner on bail, target for completion of the trial in BLAPL No.591 of 2009 has been fixed at the behest of the present petitioner. It was therefore, the duty of the present petitioner to bring to the knowledge/notice of the learned trial court about the target fixed by filing a copy of the order passed in the aforesaid bail application. I do not deny the responsibility of the Registry of the Court, but failure on the part of the Registry alone may not be a good ground to release the petitioner on bail, especially in view of the nature of offence alleged against the petitioner. Non-recording of confessional statement of the petitioner by the Magistrate present at the time of detection is pressed as a ground to release the petitioner on bail; but such latches/lapses do not have the potency to vitiate the trial.

8. Taking into consideration all the aforesaid facts, I am not inclined to exercise my discretion in favour of the petitioner under Section 439, Cr.P.C., at this stage, especially in view of the bar under Section 37 of the N.D.P.S. Act. But, as this Court had fixed the

target for completion of the trial within four months vide order passed in BLAPL No.591 of 2009, I reiterate the same observation and direct the learned Trial Court to complete the trial of the case within a period of four months from the date of receipt of a copy of this order, by splitting up the case so far as the present petitioner and other apprehended accused persons are concerned. I make it clear that it is the duty of the petitioner to file a copy of this order in the trial court if he is desirous of availing the benefit of this order. The Registry of this Court also shall take steps to communicate this order to the trial court so that this order can be complied. It is made clear that if the trial is not completed within four months as directed, then the petitioner may renew his prayer for bail.

The BLAPL is accordingly disposed of.

Application disposed of.