

# Rabi Prakash vs The State Of Odisha on 13 July, 2023

**Bench: Surya Kant, Dipankar Datta**

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ITEM NO.14

COURT NO.5

SECTION II-B

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s).4169/2023

(Arising out of impugned final judgment and order dated 11-11-2022  
in BLAPL No.11613/2021 passed by the High Court of Orissa at  
Cuttack)

RABI PRAKASH

Petitioner(s)

VERSUS

THE STATE OF ODISHA

Respondent(s)

IA No.56144/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED  
JUDGMENT

IA No.56145/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES  
Date : 13-07-2023 This matter was called on for hearing today. CORAM :

HON'BLE MR. JUSTICE SURYA KANT HON'BLE MR. JUSTICE DIPANKAR  
DATTA For Petitioner(s) Mr. Shyam Manohar, Adv.

Ms. Kiran Pandey, Adv.

Ms. Isha Yadav, Adv.

Mr. Laxmi Sewak, Adv.

Ms. Manju Jetley, AOR For Respondent(s) Ms. Sharmila Upadhyay, AOR Mr. Sarvjit  
Pratap Singh, Adv.

Ms. Supriya R Pandey, Adv.

Mr. Rajesh Sharma, Adv.

UPON hearing the counsel the Court made the following O R D E R

1. The petitioner seeks his enlargement on bail in P.S.Case No.91 of 2019, registered at Police Station Semiliguda, District Koraput, out of which T.R.Case No.27 of 2019 is pending in the Court of Addl.Sessions Judge-cum-Special Judge, Koraput, for Date: 2023.07.13 commission of offence punishable under Section 20(b)(ii)(C) 18:42:13 IST Reason: of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act').
2. The prosecution case appears to be that the police party while on patrolling duty on 02.10.2019 at about 12.30 p.m. on Nandapur-Semiliguda road MDR-55, spotted one full body twelve wheeler Truck (Eicher) bearing No.EB-13-BD-5753 coming from Nandapur side at a high speed and accordingly they chased and detained the truck at Bodenga Chhak and found three persons boarded in the said truck including the driver. Eventually, 247 kg. Ganja was recovered from the truck. The petitioner was one of the occupants of the truck and was arrested at the spot. He has been in custody for more than three and a half years. There are no criminal antecedents against the petitioner.
3. We are informed that the trial has commenced but only 1 out of the 19 witnesses has been examined. The conclusion of trial will, thus, take some more time.
4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.
5. However, we find some merit in the contention of learned counsel for the respondent – State that the petitioner being not a resident of the State of Orissa, some stringent conditions are required to be imposed upon him.
6. Consequently, while directing that the petitioner shall be released on bail on his furnishing bail bonds to the satisfaction of the Trial Court, it is directed that he shall be required to produce two local sureties before the Trial Court. The petitioner shall also appear before the Trial Court on every date of hearing. In case he absents himself, it shall be taken as a misuse of concession of bail granted to him today by this Court. Ordered accordingly.
7. The Special Leave Petition stands disposed of accordingly.
8. As a result, pending interlocutory applications also stand disposed of.

(SATISH KUMAR YADAV)  
DEPUTY REGISTRAR

(PREETHI T.C.)  
COURT MASTER (NSH)