

SUPREME COURT OF INDIA**Date: November 29, 2023****Bench: Justices Abhay S. Oka and Pankaj Mithal**

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 3633 OF 2023

(Arising out of S.L.P.(Crl.) No.12205 of 2023)

MANORANJAN ROUT ...APPELLANT(S)**VERSUS****STATE OF ODISHA ...RESPONDENT(S)****Legislation:**

Sections 20(b)(ii)(C), 25, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985

Article 21 of the Constitution of India

Subject: The appeal concerns the grant of bail to the appellant, who has been under prolonged incarceration without the conclusion of his trial, in a case involving offenses under the Narcotic Drugs and Psychotropic Substances Act, 1985.

Headnotes:

Prolonged Incarceration without Trial Progress – Appellant in custody since 9th April 2021, with minimal trial progress despite High Court's order for completion within six months – Only 5 out of 25 witnesses examined – Issue of prolonged incarceration without trial conclusion highlighted.

High Court's Inconsistent Bail Grant – High Court's recognition of the appellant's entitlement to bail, yet only granting interim bail for 45 days – Illegality of granting bail for limited duration when accused entitled to regular bail – High Court's practice of granting interim/short duration bail despite finding entitlement for regular bail observed in multiple cases.

Right to Liberty and Illegal Bail Orders – Granting bail for limited duration deemed illegal when the accused is entitled to bail – Such orders infringe upon the constitutional right to liberty under Article 21 and impose additional burdens on the litigant.

Supreme Court's Decision – Appeal allowed – Modification of High Court's order to grant regular bail to the appellant till the final disposal of the case, maintaining the same terms and conditions as in the impugned order.

Referred Cases: None.

ORDER

Leave granted.

We have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent state.

The appellant is being prosecuted for the offence punishable under Sections 20(b)(ii)(C), 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. A perusal of the impugned order shows that the learned Judge of the High Court concluded that the appellant was entitled to be enlarged on bail. However, he ended up granting interim bail for 45 days.

The tentative findings recorded by the learned Judge can be summarized as follows:

(1) By the order dated 5th September 2022 passed by the High Court on the earlier bail application filed by the appellant, while denying the relief of bail, the High Court had directed the disposal of the case within six months. However, no progress has been made in the trial;

(2) The appellant has been in custody since 9th April, 2021. Notwithstanding the direction dated 5th September 2022 to dispose of the case within six months, only 5 out of 25 witnesses have been examined till date, and

(3) There is a prolonged incarceration of the appellant without disposal of the case.

In short, the High Court was of the view that prolonged incarceration with no prospect of the trial coming to an end makes a case for the grant of bail.

In view of these findings recorded by the learned Judge, a case was made out to grant bail to the appellant till the disposal of the case. Interestingly, after recording these tentative findings, the High Court

granted bail only for 45 days by describing it as an interim bail. But after granting the interim bail, as mentioned in the last paragraph of the impugned order, the learned Judge has finally disposed of the bail application. If an order granting interim bail was to be passed, the bail application should have been kept pending.

We may note here that this is the fifth or sixth order which we came across from the same High Court where, after recording a finding that an accused was entitled to be enlarged on bail, the High Court has chosen to grant either interim bail or bail for a short duration.

When a Court concludes that the accused is entitled to be enlarged on bail pending trial, granting bail only for a limited duration is illegal. Such orders violate the right to liberty under Article 21 of the Constitution of India. Moreover, it puts an additional burden on the litigant as he is forced to file a fresh bail application for an extension of the bail granted earlier.

In the circumstances, the appeal must succeed. By modifying the impugned order dated 11th August 2023, we direct that the appellant shall be enlarged on bail until the final disposal of the case on the same terms and conditions mentioned in the impugned order. The appeal is accordingly allowed.

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