

CASE NO.:
Appeal (crl.) 593 of 2002

PETITIONER:
BABUA @ TAZMUL HUSSAIN

Vs.

RESPONDENT:
THE STATE OF ORISSA & ORS.

DATE OF JUDGMENT: 07/05/2002

BENCH:
S. Rajendra Babu & B.N. Agrawal

JUDGMENT:

J U D G M E N T
RAJENDRA BABU, J. :

Leave granted.

The appellant before us has been knocking at our doors on several occasions as the trial is stalled in a criminal case in which he is involved has been pending before the Court of Special Judge at Balasore in the State of Orissa on the allegation that on or about 27.7.1998 the appellant abetted the commission of an offence by (i) Azad Parvez, (ii) Batu @ Jahid Parvej, and (iii) Allauddin Saha @ Sk. Allauddin or was party with them in a criminal conspiracy to commit an offence of possessing and/or sale of cannabis ganja and manufactured drugs punishable under the Narcotic Drugs & Psychotropic Substances Act, 1985 [hereinafter referred to as 'the Act'] within the cognizance of the Special Judge at Balasore.

In the said proceedings 10 accused persons are facing trial of whom one accused is now absconding. On 24.3.1999 Special Judge at Balasore split the case into two cases separating trial of absconding persons as Special Cases No. 64 and 64-A of 1998 and on 30.3.1999 framed charges against 6 accused persons, including the appellant for various offences under the Act. Bail application filed by the appellant stood rejected. The Orissa High Court suo motu took cognizance of the case on the basis of newspaper reports and by an order made on 30.7.1999 set aside the order of the Special Judge at Balasore made on 24.3.1999 splitting the case into two cases. It is brought to our notice that Azad Parvez is facing trial in two cases - NDPS Case No. 19 of 1999 on the file of the Special Judge XII Alipur 24, Parganas West Bengal and CR Case No. 485 of 1989 before the Special Judge Barampur West Bengal. The said Azad Parvez is not made available in spite of requests made by the Special Judge at Balasore on the ground that it would be difficult for them to get him back to their Court.

When the appellant approached this Court challenging the order setting aside the splitting of cases and refusal of bail, the matter was disposed of with the following observations :-

"However, attempts should be made by the State Government of Orissa and West Bengal to see that the trial in the cases pending before them are facilitated by making appropriate arrangements to

have all the accused persons in one place for purposes of Trial and details should be worked out and shall be examined by the High Court of Orissa and the High Court of Calcutta on the administrative side and appropriate directions be given in that regard to enable expeditious disposal of the case. In this case, it is, therefore, not proper for us to enter upon the merits of the case so far as the splitting of the charges are concerned or refusal of the IInd Additional district Judge, Howrah in not releasing the main accused to enable the Trial to go on at Balasore. Copies of this order shall be sent to the Chief Secretary of the Government of Orissa, Registrar of the High Court of Calcutta and Registrar of the High Court of Orissa for compliance with directions."

The appellant in a writ petition sought for direction for expeditious disposal of the case, but the High Court merely noticed the observations made by us and disposed of the matter without stating anything further.

In the circumstances, the appellant has approached this Court for appropriate reliefs in these cases.

We directed the issue of notice to the State of West Bengal and also to the Deputy Director, Narcotics Control Bureau, Eastern zonal Unit to show cause as to why the cases in which the accused persons who are involved in other cases should not be transferred to any one of the courts in the State of Orissa or in the State of West Bengal. Shri P.V. Subba Rao, Assistant Director, Narcotics Control Bureau, has filed an affidavit setting out the circumstances in which it would not be feasible to transfer the cases from one court to other.

We have examined the matter in detail and the various circumstances arising in the case such as the long pendency of the matter, on account of non-availability of all the accused persons in one court or the other and in the event of transfer of the cases to either courts and difficulties in making witnesses available in addition to that of the accused persons and, therefore, we do not think that course is feasible in the circumstances arising in the case.

We, however, feel that the trial of the cases of the appellant should not be stalled on account of rigid attitude adopted by the Special Judge in the pending case in the State of West Bengal by not making available one of the accused Mohd. Azad Parvez to the court of the Special Judge at Balasore for purpose of trial. Therefore, considering all aspects of the matter, we direct as follows :-

(1) The Special Judge at Balasore who is trying the Special Case No. 64 of 1998 shall fix the dates of trial on day-to-day basis and all the prosecution witnesses be examined and trial be completed as expeditiously as possible not later than three months.

(2) Notwithstanding the order made by the High Court as to splitting of the case, the Special Judge at Balasore may split the case in so far as those accused persons who are absconding are concerned and proceed with the trial as directed by us.

(3) During the aforesaid period the Special Judge XII Alipur 24, Parganas, West Bengal (NDPS Case No. 19 of 1999) and Special Judge Barampur, West Bengal (CR Case No. 485 of 1989) shall make available the accused Mohd. Azad Parvez to the court of Special Judge at Balasore for the purpose of trial on an intimation being sent by the Special Judge at Balasore at least one week earlier.

(4) The State of Orissa and the Jail Authorities functioning in the State of Orissa shall ensure that after the aforesaid period the accused Mohd. Azad Parvez is returned to the court or authorities in the State of West Bengal within a week thereafter. An undertaking to the said effect shall be filed on behalf of the State of Orissa by the Secretary, Home Department, before this Court within a period of two weeks.

With these directions, this appeal shall stand disposed of.

.J.
[S. RAJENDRA BABU]

.J.
[B.N. AGRAWAL]

MAY 7, 2002.