

03. 31.07.2020

This Court is convened through Video Conferencing.

2. Heard Mr. B.S. Rayaguru, learned counsel for the petitioner and Mr. J. Katikia, learned Additional Government Advocate for the State-opposite party nos.1 to 5.

3. This matter is an eye-opener as to how the system works for the disadvantage for the class of persons, who do not get adequate legal assistance to access the justice. The petitioner has approached this Court by way of this writ petition in the nature of habeas corpus seeking a direction to the Superintendent, Sub-jail, Dharamgarh, Kalahandi-opposite party no.5, where her husband namely Sibaram Das @ Santosh is presently lodged, to immediately release him and has also prayed for grant of adequate compensation for his illegal detention for a period of two years and ten months, in excess to the substantive sentence of seven years, which eventually was awarded to him on conclusion of trial by following his conviction for offence under Section 395 IPC, apart from other offence vide the judgment and order of learned

Assistant Sessions Judge, Dharamgarh dated 15.02.2007 passed in Sessions Case No.106/29 of 2002.

4. Sibaram Das @ Santosh was taken to custody in connection with Sessions Case No.106/29 of 2002 arising out of Dharamgarh P.S. Case No.97(5) of 2001 on 07.07.2003. Initially, the trial in the aforesaid case was being conducted by the court of learned Sessions Judge, Kalahandi at Bhawanipatna. But later on, the matter was transferred to the court of learned Assistant Sessions Judge, Dharamgarh and the trial culminated into conviction of Sibaram Das @ Santosh and four others, namely, Tularam Majhi, Satyananda Pradhan @ Lamba, Hiranya Devaguru @ Devagana and Simanchal Dundikia @ Raut. Sibaram Das @ Santosh filed Criminal Appeal No.18/70/33 of 2007-08-2011 before the learned Additional Sessions Judge, Dharamgarh against his conviction and sentence. The said appeal against the judgment of conviction and order of sentence passed by learned Assistant Sessions Judge, Dharamgarh was dismissed on 22.11.2012. It is not in dispute that during pendency of the appeal, Sibaram Das @ Santosh was taken into custody in connection with the trial of another

case of Nabarangpur, wherein he remained in jail custody at Nabarangpur Jail from 31.08.2012 till 22.12.2012 where he was fully acquitted. It appears from the copy of the order dated 25.02.2020 at Annexure-5 that Sibaram Das @ Santosh was again arrested and produced before the court of learned Assistant Sessions Judge, Dharamgarh pursuant to the non-bailable warrant of arrest issued by that court and since then he is in custody.

5. When the matter was taken up in the first round, the Court expressed surprise why Sibaram Das @ Santosh has been arrested and why at all he was continued in detention beyond 06.07.2010 when he had already served out the sentence of seven years, which was fully awarded to him on account of his conviction for the offence under Section 395 IPC and why at all he was again arrested on 25.02.2020 and since then he is in custody.

6. Mr. J. Katikia, learned Additional Government Advocate for the State-opposite parties prayed for a pass over to seek instructions. In the second round, he fairly submits that the husband of the petitioner has actually

served out the sentence of seven years on 06.07.2010 and beyond that he was being continued in detention in connection with the trial of another case at Nabarangpur wherein he was taken to jail custody on 31.08.2012 and was finally acquitted on 22.12.2012. However, he was unable to explain, when Sibaram Das @ Santosh was completed seven years on 06.07.2010, under what authority of law his detention was continued for more than two years upto 31.08.2012 when he was taken to custody in connection with trial of the case at Nabarangpur and why has been again arrested on 25.02.2020.

7. On pointed query of the Court as to why apart from directing immediate release of Sibaram Das @ Santosh adequate compensation may not be awarded to him, Mr. J. Katikia, learned Additional Government Advocate for the State though does not oppose the first part, but prayed for time to file counter affidavit on the second part.

8. While, therefore, directing the Superintendent, Sub-jail, Dharamgarh, Kalahandi-opposite party no.5 to release Sibaram Das @ Santosh immediately from jail

custody in connection with S.C. No.106/29 of 2002 in the Court of learned Assistant Sessions Judge, Dharamgarh, we grant two weeks time to Mr. J. Katikia, learned Additional Government Advocate for the State to file counter affidavit as to why the exemplary compensation shall not be awarded to the husband of the petitioner i.e. Sibaram Das @ Santosh for his wrongful and illegal detention for a period of two years and ten months.

Accordingly, list this matter on 17.08.2020.

The Deputy Registrar (Judicial) is hereby informed to communicate the order of release of the husband of the petitioner namely Sibaram Das @ Santosh in connection with S.C. No.106/29 of 2002 in the Court of learned Assistant Sessions Judge, Dharamgarh to the Superintendent, Sub-jail, Dharamgarh, Kalahandi-opposite party no.5 immediately if his detention is not required in any other case.

A copy of this order be also forwarded to Registrar General of the High Court for needful.

As Lock-down period is continuing for COVID-19, learned counsel for the petitioner may utilize the soft copy

of this order available in the High Court's website or print out thereof at par with certified copies in the manner prescribed, vide Court's Notice No.4587, dated 25.03.2020.

(Mohammad Rafiq)
Chief Justice

MP

(K.R. Mohapatra)
Judge