

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.143 of 2021

Abhaya Sabhasundar

.... ***Petitioner***
Mr.S.S.Ray, Advocate

-versus-

State of Odisha

.... ***Opposite Party***
Mr. S.Patra, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

23.08.2022

Order No.

11.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner as well as learned Additional Standing Counsel for the State.
3. This is an application under Section 439 of the Code of Criminal Procedure filed by the Petitioner for bail in connection with Adava P.S.Case No.80 of 2020 corresponding to G.R.Case No.51 of 2020 pending in the Court of the learned Special Judge, Gajapati at Parlakhemundi for alleged commission of offence under Sections 20(b)(ii)(C)/25/29 of the N.D.P.S.Act.
4. It is submitted by the learned counsel for the Petitioner that the Petitioner is in custody since 12.11.2020. In the meantime investigation has been concluded and Charge Sheet has been filed. He further submits that trial has not yet commenced although the Petitioner is languishing in jail custody. It is submitted by the learned counsel for the Petitioner that the Petitioner has neither been named in the F.I.R. nor he was arrested from the spot along with the three

accused persons, who were sitting in the Bolero vehicle. He further contends that on the basis of co-accused statement, he hired a vehicle for Rs.10,000/-. Further drawing the attention of this Court, learned counsel for the Petitioner submits that on search of the vehicle RC Book was found where the name of the Petitioner was mentioned. Apart from that no materials have been collected to establish the fact that the contraband articles were sized from the exclusive and conscious possession of the present Petitioner. Further, learned counsel for the Petitioner relying on the judgment of the Hon'ble Apex Court in the case of *Tofan Singh vs. State of Tamilnadu* : reported in (2021) 4 SCC 1 and order dated 10.01.2022 in the matter of *State By (NCB) Bengaluru v. Palluabid Ahmad Arimuta and another (Special Leave to Appeal (Criminal) No.242 of 2022)* submits that the Petitioner is entitled to get the benefit as has been decided by the Hon'ble Apex Court. In the aforesaid judgment, it has been observed that co-accused statement cannot be used against the Petitioner as a substantive evidence.

5. Learned Additional Standing Counsel on the other hand submits that although the Petitioner was not arrested at the spot, however, the vehicle seized in connection with the crime stands recorded in the name of the Petitioner. He further submits that the articles seized reflecting the name of the Petitioner.

6. Having heard learned counsel for the parties and on perusal of the documents placed before this Court, this Court is of the view that mere reflection of name of the Petitioner in the R.C.Book and on the ground that merely the Petitioner is the owner of the vehicle, it cannot be conclusively said that the contraband articles were seized from the conscious and exclusive possession of the Petitioner. In such view of the matter, Section 37 of the N.D.P.S.Act would not

stand as a bar to release the petitioner on bail. In such view of the matter, this Court is inclined to grant bail to the Petitioner and it is directed that let the Petitioner be released on bail in the aforesaid case on furnishing a bail bond of Rs.50,000/- (Rupees Fifty thousand) each with two local solvent sureties each for the like amount to the satisfaction of the learned court in seisin over the matter.

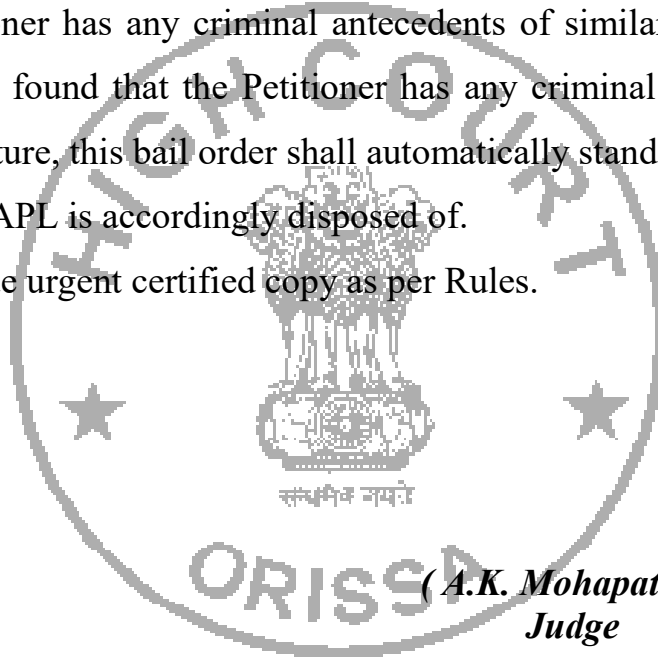
7. The trial court may impose any other condition(s) as deem fit and proper.

8. It is further directed that the bail granted to the Petitioner is subject to the condition that learned court below shall verify whether the Petitioner has any criminal antecedents of similar nature. In the event it is found that the Petitioner has any criminal antecedents of similar nature, this bail order shall automatically stand revoked.

9. BLAPL is accordingly disposed of.

10. Issue urgent certified copy as per Rules.

RKS



(*A.K. Mohapatra*)
Judge