

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.494 of 2021

Satpathi Bisoyi @ Satapathi Bisoyi *Petitioner*
Mr. Basudev Pujari, Advocate
-versus-
State of Odisha *Opposite Party*
Mr. P.C.Das, A.S.C.

CORAM:
JUSTICE A.K.MOHAPATRA

ORDER
29.09.2022

Order No.

13. 1. This matter is taken up through Hybrid Arrangement (Virtual / Physical Mode).
2. This is an application under Section 439, Cr.P.C. filed by the Petitioner for bail in connection with Adava P.S. Case No.111 of 2020 corresponding to G.R. Case No.64 of 2020 pending in the Court of learned Special Judge, Gajpati at Parlakhemundi.
3. Heard learned counsel for both the parties.
4. It is submitted by the learned counsel for the Petitioner that the Petitioner is in custody since 05.11.2020. Further, it is contended that the investigation has been concluded and charge sheet has been filed. Learned counsel for the Petitioner further expressed his anguish and submits that although the Petitioner is in custody for more than two years, however trial has not yet commenced. On a perusal of the F.I.R., it appears that the Petitioner is an Auto driver in which contraband ganja weighing 158 kg. was being transported. He further submits that the Petitioner is an auto driver and maintains his family from the hire charges he received by driving the auto. He

further submits that the Petitioner was hired by some people for transportation of goods. However the Petitioner was caught while transporting ganja in his auto. It is further submitted by the learned counsel for the Petitioner that the Petitioner is a young boy and belongs a very poor family. He further submits that the Petitioner does not have similar criminal antecedents. Further relying upon the judgment of the Hon'ble Apex Court in **Hussainara Khatoon (1) v. State of Bihar (1980) 1 SCC 81** learned counsel for the Petitioner submits that the accused has the right of expeditious trial. In the event trial is delay the valuable right is accrued to the Petitioner to be enlarged on bail.

5. Learned Additional Standing counsel on the other hand submits that the contraband ganja seized is more than commercial quantity. Therefore, the bar under section 37 of the Act is not attracted to the facts of the case. On such ground the bail application of the petitioner should be rejected.

6. So far as Section 37 of the Act is concerned, this Court is of the view that merely because contraband grant was seized from the auto of the petitioner, it cannot be said that the Petitioner had exclusive knowledge about the ganja. Unless it is established by adducing evidence that it is within his knowledge and the Petitioner is having contraband ganja with his exclusive position, the aforesaid provision will not be attracted.

7. Having regard to the facts and circumstances of the case, considering the nature and gravity of offense alleged and the period of detention of the petitioner and taking into consideration the fact that the Petitioner is in custody for about two years and the social background

of the present Petitioner, this Court is inclined to release the Petitioner on bail on furnishing a bail bond of Rs.30,000/- (Rupees Thirty thousand) with one local surety for the like amount to the satisfaction of the learned court in seisin over the matter in the aforesaid case, but subject to the following conditions –

- i) He shall appear before the trial court on each and every date as fixed by the Court.
- ii) He shall not indulge himself in similar nature of criminal offence while on bail.
- iii) He shall not tamper with the prosecution evidence;
- iv) He shall not influence or threaten any prosecution witness and cooperate in the investigation.
- v) He shall not leave the jurisdiction of the court without special permission from the court.
- v) Violation of any of the conditions shall entail cancellation of bail.

8. It is further directed that the court in seisin over the matter shall verify the criminal antecedents of the Petitioner and may impose any additional condition(s), if situation so warrants. In the event it is found that the Petitioner is having similar nature of criminal antecedents then this order shall not be given effect to.

9. The BLAPL is accordingly disposed of.

10. Urgent certified copy of this order be granted as per rules.

(A.K. Mohapatra)
Judge