

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 509 OF 2021

Jiban Biswas

..... *Petitioner*
Mr. N.R.Sahoo, Adv.

-versus-

State of Odisha

..... *Opposite Party*
Mr. K.K.Gaya, ASC

CORAM:
JUSTICE V. NARASINGH

ORDER
11.04.2022

Order No.

11.

1. This matter is taken up through Hybrid Mode.
2. The petitioner is an accused in connection with T.R. Case No. 180 of 2020 on the file of the Learned Sessions Judge-Cum-Special Judge, Malkangiri, arising out of Motu P.S. Case No. 87 of 2020, for commission of alleged offence under Sections-20(b)(ii)(C)/27(A) of N.D.P.C., Act.
3. Being aggrieved by the order dtd. 04.01.2021 passed by the Learned Sessions Judge-Cum- Special Judge, Malkangiri in T.R. Case No. 180 of 2020, rejecting the bail application of the petitioner, the present BLAPL has been filed.
4. Heard Mr. N.R.Sahoo, learned counsel for the petitioner and Mr. K.K.Gaya, learned Additional Standing Counsel for the State.
5. Learned counsel for the petitioner submits that the implication is on the basis of statement made by the accused

before one Sivasankar Swain, who was the driver of the raiding party and the substantive allegation against the petitioner is that he is the pillion rider of the Hero Honda CD Delux Motor Cycle, red colour without registration number having Chasis No. 06L29F19152 and Engine No. 06 L29E19058 which was escorting the truck from which contraband was recovered. There has been no conscious recovery and the only basis of implication is the statement referred to above on the basis of which passenger Auto rickshaw bearing registration No. G435AIV being driven by one Madkami Suba was detained and contraband to the tune of 290 Kg and 600 grams contraband was recovered. It is submitted that there is no recovery from the Hero Honda Motor Cycle in which the petitioner was admittedly travelling as a pillion rider along with co-accused Gopal Mandal. It is submitted that there has been no recovery and the basis of implication is the statement made to the driver of the raiding party and there having no other materials to connect the petitioner from whom the contraband was seized from the accused travelling in the Auto, the learned counsel for the petitioner placing reliance on the judgment of the Apex Court in the case of **Tofan Singh Vs. State of Tamil Nadu**, reported in (2021) 4 SCC 1, submits that the petitioner is entitled to be released on bail.

6. It is also submitted that since the statement as recorded being inadmissible in terms of the judgment of Tofan Singh(supra), there is prima facie no material to connect the petitioner with the alleged seizure and therefore further detention of the petitioner is not warranted . It is also submitted that in view

of the basis on which the petitioner has been implicated, the bar under Sec. 37 of the NDPS Act, will not come to play. In this context learned counsel for the petitioner also relied on the orders of the Apex Court dated 10.01.2022 in SLP to Appeal (Criminal) No. 242 of 2022(**State by (NCB) Bengaluru Vs. Pallulabid Ahmad Arimutta & Anr.**) along with other connected matters and the judgment of the Apex Court dated 13.12.2021 in the SLP to Appeal (Criminal) No.5703 of 2021(**Bharat Chaudhary Vs. Union of India**) and another connected matter.

7. Per contra the learned counsel for the State referring to the materials on record states that in the factual back drop of the case at hand the statement which was made to Sivasankar Swain cannot be treated as confessional statement rather the statement which pointed out to the complicity of the petitioner in as much as on the basis of such statement Auto Rickshaw was apprehend from which contraband to the tune of 295 kg. and 600 grams was recovered. Further it is submitted that the period of detention is immaterial at this stage since there is clear prima facie case implicating the petitioner.

8. On conspectus of materials on record and on consideration of the recital in the case diary as placed since there is no other material to connect the petitioner with the contraband but for the statement to the driver of the raiding party, this Court following the judgment in the case of Tofan Singh (supra) and taking into account the period of detention and that the trial has not commenced, directs that the petitioner shall be released on bail on such terms to be fixed by the learned Court in seisin over the

matter including the condition that he shall appear before the jurisdictional Police Station of the court in seisin over the matter once every fortnight. The first date of appearance shall be fixed by the learned court below.

9. The Bail Application thus stands disposed of.
10. Urgent certified copy of this order be granted as per rule.

Dhal

*(V.Narasingh)
Judge*

