

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.584 of 2022

Sk. Rafik

....

Petitioner

Mr. C. Samantaray,
Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. P. Tripathy,
Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER
26.8.2022.

Order No.

08.

1. This matter is taken up through virtual mode.
2. Surrender certificate has been filed in Court indicating that the Petitioner has surrendered to custody on 17th June, 2022. The same be kept on record.
3. Heard learned counsel for the Petitioner and learned Addl. Standing Counsel for the State.
4. The Petitioner is in custody since 17th August, 2021 in connection with P.R. No.21-22 of Inspector Excise, Sadar

Range, Balasore corresponding to Special Case No.209/2021 pending in the court of learned Sessions Judge-cum-Special Judge, Balasore for the alleged commission of the offence under Section 21 (C) of the N.D.P.S. Act.

5. It is alleged that the Petitioner was in possession of brown sugar weighing 620 grams when he was apprehended by Police. Learned counsel for the Petitioner submitted that the mandatory provision of Section 50 of the N.D.P.S. Act has not been followed inasmuch the right of the Petitioner to be searched in presence of a Gazetted Officer/Magistrate was not complied with, which vitiates the entire investigation. He has referred to the observations made by the apex Court in the case of ***Tofan Singh v. The State of Tamil Nadu***. Learned counsel for the Petitioner has also referred to the statement of the independent witness namely, Raj Kishore Patra, who has been examined as P.W.2 in the ongoing trial, who has not supported the prosecution case at all. It is further submitted that in spite of statutory requirement of taking two witnesses, the Police personnel had taken the help of only one witness.

6. Though there is force in the submission of the learned counsel for the Petitioner that non-compliance of the provision of Section 50 of the Act can be fatal to the case of the prosecution yet, whether the same was complied with or not is a question of fact to be decided during trial. Only because one of the independent witness turned hostile cannot wash away the

entire evidence adduced by the prosecution through official witnesses.

7. Considering the above facts as also taking into the fact that the seized contraband is more than commercial quantity, I am not inclined to allow the prayer for bail, which is therefore rejected.

AKB

(Sashikanta Mishra)
Judge



