

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 744 OF 2021

Manoj Kumar Swain

..... ***Petitioner***
Mr. S.K. Sarangi, Adv.

-versus-

State of Orissa

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

CORAM:
JUSTICE V. NARASINGH

ORDER
06.04.2022

Order No.

08.

1. This matter is taken up through Hybrid Mode.
2. The petitioner is an accused in connection with G.R. Case No. 20 of 2020 (N) on the file of the Learned Additional Sessions Judge-cum-Special Judge, Aska, arising out of Dharakote P.S. Case No. 172 of 2020, for commission of alleged offence under Sections-20(b)(ii)(C) of N.D.P.C., Act and is in custody since 16.11.2020.
3. Being aggrieved by the order dtd. 18.12.2020 passed by the Learned Additional Sessions Judge-cum-Special Judge, Aska in G.R. Case No. 20 of 2020 (N), rejecting the bail application of the petitioner, the present BLAPL has been filed.
4. Heard Mr. S.N. Panda, learned counsel for the petitioner and Mr. K.K. Gaya, learned Additional Standing Counsel for the State.

5. Learned Counsel for the Petitioner states that the seizure witnesses examined in the meanwhile as P.Ws. 1 and 2 have not supported the prosecution, even otherwise from the manner of seizure, conscious exclusive possession cannot be attributed to the petitioner. Hence, his further incarceration is not warranted and the bar under Section-37 of the NDPS Act won't come into play in the factual matrix of the present case.

6. Per contra, the learned counsel for the State submits that, at this stage it is not open for the Court to evaluate the evidence on record and the same is not permissible in view of the statutory bar contained under Section-37 of the NDPS Act, since, admittedly the contraband seized is beyond the commercial quantity.

7. Taking into account, the period of incarceration and that the seizure witnesses have not supported the prosecution, this court directs the petitioner shall be released on bail, on such terms to be fixed by the learned Court in seisin of the matter, including the conditions that he shall attend each date of trial.

8. The Bail Application thus stands disposed of.

9. Urgent certified copy of this order be granted as per rule.