

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.979 of 2022

***Md. Asagar @ Mohammad Asagar* *Petitioner*
@ Manu**

-versus-

State of Odisha* *Opp. Party

**CORAM:
MR. JUSTICE D.DASH**

**Order
No.**

**ORDER
13.07.2022**

- 02 1. This matter is taken up through hybrid arrangement (virtual/physical mode).
2. This is the successive journey of this Petitioner, who is in custody in connection with Padwa P.S. Case No.87 of 2018 corresponding to T.R. Case No.38 of 2018 pending in the Court of the learned Additional Sessions Judge-cum-Special Judge, Koraput for offence punishable under sections 20(b)(ii)(C)/25/29 of the N.D.P.S. Act in filing this application under section 439, Cr.P.C. for his release on bail.
3. Learned counsel for the Petitioner submits that co-accused persons, namely, Debendra Kamidi @ Deba and Md. Shenewaz @ Shewaz similarly situated with the Petitioner on the allegation that they together were involved in transportation of 113 kgs of ganja has been released on bail since 15.04.2019 and 27.04.2022 respectively. The distinction between the two is that Debendra is a permanent resident of Odisha whereas this Petitioner hails from the State of Bihar. It is further submitted

that this Petitioner being arrested in the case is in custody since 05.10.2018 and since then when the trial has not even reached the midway. He further submits that for such long detention of the Petitioner in custody when the trial is progressing at a snail's pace and no such step is being taken by the prosecution to expedite the same, further detention of the Petitioner in custody is not warranted and the bar contained under section 37 of the Act should not be applied. He, therefore, urges for reconsideration of the prayer for grant of bail to the Petitioner on such terms and conditions as deemed just and proper.

4. Learned counsel for the State does not dispute the position that the Petitioner has been in custody since 05.10.2018 and that co-accused is a permanent resident of State of Odisha has been enjoying the liberty. He, however, does not controvert the submission of the learned counsel for the Petitioner that in the trial even half of the prosecution witnesses cited in the charge-sheet have not yet been examined.

5. Taking into account the submissions made; further keeping in view the materials on records as those stand against the Petitioner as also the quantity of seized contraband with other surrounding circumstances including the period of detention of the Petitioner in custody and on going through the order passed by the learned Additional Sessions Judge-cum-Special Judge; in the absence of any such impediment; while being inclined to reconsider the prayer for grant bail to the Petitioner, it is directed that the petitioner be released on bail in the aforesaid case on such terms and conditions as deemed just and proper by the court is seisin of the case with further conditions that:-

(i) he will appear in person on each date of posting of the case before the court in seisin of the case without fail;

(ii) will report before the Officer-in-Charge of the Sakund Police Station, Dist-Bhagalpur, State of Bihar on first Monday of every month without fail till conclusion of trial; and

(iii) will give his contact address and cell phone numbers by furnishing affidavit and in case of change shall so intimate by further affidavit before the court in seisin of the case.

6. The BLAPL is accordingly disposed of.

Issue urgent certified copy as per rules.

Basu

