

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**BLAPL No.1037 of 2021**

***Jasbir Singh***

.... ***Petitioner***  
*Mr. M. Padhy, Advocate*

*-versus-*

***State of Orissa***

.... ***Opp. Party***  
*Mr. S. R. Roul, A.S.C.*

**CORAM:**  
**JUSTICE G. SATAPATHY**

**ORDER**  
**04.11.2022**

**Order No.**

- 04.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
  2. This is an application U/S. 439 of Cr.P.C. by the Petitioner for grant of bail in connection with Jeypore/Koraput P.S. Case No.09 of 2019 corresponding to T.R. Case No.47 of 2019 pending in the file of learned Additional District and Sessions-cum-Special Judge, Koraput for commission of offence punishable U/S. 20(b)(ii)(C) of NDPS Act, on the allegation of possessing 26Kg 880grams of contraband Ganja in three air bags along with three co-accused persons.
  3. In the course of hearing of the bail application, Mr. Manoranjan Padhy, learned counsel for the petitioner submits that the petitioner is in jail custody since 23.12.2019, although he is an innocent of the offences alleged against him. It is further submitted by him that the prosecution allegation is that the petitioner and three co-accused persons were standing behind three bags at the platform in Koraput Railway Station awaiting for the arrival of train, but the

prosecution has not made it clear as to who was holding which bag nor is there any substance in the prosecution allegation that the Petitioner was individually carrying the contraband Ganja in all those three bags but the GRP staff over zealously implicated the Petitioner by mixing the contraband articles found in the three bags to make it commercial quantity and showed the seizure of total quantity of contraband Ganja against the petitioner and other three accused persons to defeat their personal liberty by creating evidence to attract the bar under Section 37 of NDPS Act. It is further submitted that although the Petitioner is in custody since last three years but trial is yet to commence and thus, the personal liberty of the Petitioner is seriously curtailed. It is further submitted that if the prosecution allegations are accepted on the face of it, the only inference would be that the contraband Ganja was carried in three bags which were marked as A, B and C containing 10kg 550 Grams, 9kg 430 Grams and 6 kg 900 grams of contraband Ganja respectively and when these facts are considered, the bar as appearing U/S. 37 of the N.D.P.S. Act would not come into operation so as to deny bail to the Petitioner. It is further submitted that the other three co-accused persons have already been granted bail in BLAPL Nos. 2150 of 2020, 327 of 2021 and 2115 of 2020. It is also submitted that no criminal antecedent has been reported against the Petitioner and, the Petitioner, therefore, may kindly be granted bail at least on these grounds.

4. On contrary, learned counsel for the State strongly opposes the bail application of the Petitioner and he submits that the seizure of contraband Ganja to the tune of 26kgs 880 grams in this case would attract the bar U/S.37 of the N.D.P.S. Act and merely because three air bags have been used for carrying the contraband Ganja, it cannot be said that each individual was carrying a lesser amount of

contraband Ganja so as to not attract the provision of Section 37 of N.D.P.S. Act, especially when the offence alleged against the Petitioner and co-accused are with aid of Sections 25 and 29 of N.D.P.S. Act. Learned counsel for the State, however, does not dispute about grant of bail to other three co-accused persons and absence of criminal antecedent against the present Petitioner, but he strongly opposes the present bail application on the ground that the Petitioner is a resident of Uttarakhand and there is every likelihood of the Petitioner avoiding the trial in the case. Learned counsel for the State accordingly prays to reject the bail application of the Petitioner.

5. Considering the rival submissions of the parties, the nature of accusations, release of other three co-accused persons on bail in BLAPL Nos. 2150 of 2020, 327 of 2021 and 2115 of 2022 and keeping in view that there is no specific allegation against the Petitioner for carrying all the three bags as also the period of detention of the petitioner in custody since 23.12.2019 and absence of criminal antecedent of the Petitioner and regard being had to the other circumstance in entirety and the manner and circumstance of seizure of the contraband articles at public place, this Court, however, considers the bail application of the Petitioner favourably.

6. Hence, the prayer for bail of the Petitioner is allowed and he be released on bail on furnishing a cash surety of Rs.50, 000/- (fifty thousand) in addition to bail bonds of Rs.2,00,000/- with two local solvent sureties each for the like amount to the satisfaction of the learned Court in seisin of the case with further conditions that the Petitioner shall not commit similar type of offence while on bail and that the Petitioner shall not leave the jurisdiction of the learned trial Court without prior permission till conclusion of trial and the Petitioner shall attend the trial Court on each date of posting of the

case unless his attendance is dispensed with.

7. Before accepting the bail bonds, the learned trial Court shall make an enquiry whether the address given by the Petitioner in his bail bond is correct or not.

8. Violation of any of the condition would entail in cancellation of the bail of the Petitioner automatically.

9. Accordingly, the BLAPL stands disposed of.

10. Urgent certified copy of the order be granted on proper application.

*Priyajit*

