

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 1480 of 2022

**Bibastha Bagarty @ Bibatsa
Bagarti**

....

Petitioner

Mr. Sibbo Sankar Mishra, Advocate

- Versus -

State of Orissa

.... **Opposite Party**

Mr. S. Mishra, Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER

11.07.2022

**Order No.
06.**

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned Addl. Standing Counsel for the State.
3. The petitioner is in custody since 20.01.2022 in connection with Gochhapada P.S. Case No.17 of 2020 corresponding to C.T. Case No.18-A of 2020 pending in the Court of learned J.M.F.C., Jharsuguda for the alleged commission of offence under Sections 20(b)(ii)(C)/29 of NDPS Act.
4. It is alleged that the petitioner and some other persons were transporting contraband ganja weighing 501 Kg when they were apprehended by police.
5. Mr. S.S. Mishra, learned counsel appearing for the petitioner has forcefully argued that the entire case as laid by the prosecution is a travesty of the procedure prescribed under the NDPS Act. Referring to the FIR, Mr. Mishra has submitted that the information regarding the possession of contraband was received on 13.03.2020 at 6.30 p.m. and the raid was commenced on the next date, i.e., 14.03.2020 at 6 a.m.. The spot house was raided at around 8 a.m. and only two persons, namely Prafulla Bogerty and

Santosh Bogerty were apprehended. On interrogation, they are said to have disclosed the name of the present petitioner along with some other persons. According to Mr. Mishra, firstly, the so called statement before police is not admissible and secondly, no statement under Section 67 of NDPS Act was recorded. Therefore, there is nothing on record to even remotely show the complicity of the petitioner in the alleged occurrence save and except the so called confessional statement of the co-accused before police.

Mr. Mishra has relied upon the decision of the Apex Court in the case of *Tofan Singh vs. State of Tamil Nadu*, reported in (2020) 80 OCR (SC) 641 as also the case of *Sanjeev Chandra Agarwal v. Union of India*, reported in 2021 SCC OnLine SC 1268, wherein the apex Court was pleased to discharge the accused persons therein who had been implicated on the basis of the statements made by other accused persons only.

6. Mr. S. Mishra, learned Addl. Standing Counsel has opposed the prayer for bail by submitting that the quantity of contraband seized is huge being 501 Kgs. That apart, not only the petitioner but also the role played by several other persons, has been revealed during investigation.

7. Considering the rival submissions and on perusal of the materials on record, this Court finds that except for the so called confessional statement of the accused persons, there is no other material to show the involvement of the petitioner in the alleged occurrence. Therefore, having regard to the ratio of *Tofan Singh and Sanjeev Chandra Agarwal* (supra) I am inclined to allow the prayer for bail. Let the petitioner be released on bail on such terms and conditions as the court in seisin over the matter may deem fit and proper to impose including the condition that he shall

personally appear before the Court in seisin over the matter on each date of posting of the case and in case of even a single default, necessary order shall be passed to take him to custody again.

8. BLAPL is accordingly disposed of.

9. Issue urgent certified copy as per rules.

(Sashikanta Mishra)
Judge

A.K. Rana

