

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.488 of 2022

Prakash Chandra Agrawalla @ Prakash
Ch. Agrawal

Petitioner

Mr. D.K. Mohapatra, Advocate

-Versus-

State of Odisha and others

.... Opposite Parties

Mr. P.K. Rout, AGA

CORAM:
MR. JUSTICE R.K. PATTANAIK

ORDER
07.09.2022

Order
No.

- 05.
1. Heard learned counsel for the petitioner and learned counsel for the State.
 2. Instant petition under Section 482 Cr.P.C. is filed by the petitioner for quashing of the FIR dated 16th March, 2012 registered as Naktideul P.S. Case No.14(7) of 2012 corresponding to T.R. No.23 of 2012 pending before the court of learned Sessions Judge, Sambalpur on the grounds stated therein.
 3. Perused the FIR i.e. Annexure-1 and a copy of the charge sheet which is at Annexure-2.
 4. Learned counsel for the petitioner submits that the petitioner was in judicial custody from 2006 to 2016 and thus, he could not be involved in so far as the alleged incident is concerned and therefore, FIR has been falsely lodged against him showing his participation in the transportation of NDPS substance and hence, the criminal proceeding cannot be sustained which liable to be quashed in the interest of justice. While contending so, a copy of the

judgment in Criminal Appeal No.421 of 2007 of the High Court of Chhatisgarh at Bilaspur is referred to show that the petitioner was convicted under Section 20(b)(ii)(C) of the NDPS Act and sentenced to rigorous imprisonment for ten years and pay fine of Rs.1 lac with a default sentence of two and half years and further submitted that in view of the above sentence, as he was in judicial custody at the relevant point of time, could not be said to have participated in the alleged transportation contraband substance for which Naktideul P.S. Case No.14(7) of 2012 was registered under Section 20(b)(ii)(C) of the NDPS Act.

5. However, the Court is of the opinion that the above contention is to be examined during enquiry and trial in order to ascertain whether the petitioner had really been involved in the transportation of NDPS substance in connection with which Naktideul P.S. Case No.14(7) dated 16th March, 2012 was registered, if at all he was in judicial custody. At this juncture, learned counsel for the petitioner submits that such a ground may be allowed to be raised at the time of framing of charge which would serve the purpose, if the Court is not inclined to interfere with the continuation of the criminal proceeding in T.R. No.23 of 2012.

6. In view of the above submission, CRLMC stands disposed of granting liberty to the petitioner to raise all the grounds specially his absence for being in judicial custody when the FIR was lodged at Naktideul P.S. while seeking discharge and in the event, it is so urged, the learned court below shall do well to pass appropriate order in accordance with law.

(R.K. Pattanaik)
Judge