

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 1342 of 2021

Akash Nayak

....

Petitioner

Mr. S. Dwibedi, Advocate

-versus-

State of Odisha

....

Opposite Party

Ms. S. Mishra, ASC

CORAM: JUSTICE V. NARASINGH

ORDER

25.04.2022

Order No.

08.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned counsel for the State.
3. Copy of the FIR filed by the petitioner relating to the case at hand is taken on record.
4. The petitioner is an accused in C.T. Case No.12 of 2021, on the files of learned Special Judge, Phulbani, arising out of Phiringa P.S. Case No.13 of 2021, under Sections 20(b)(ii)(c)/25/29 of the NDPS Act and is in custody since 30.01.2021.
5. Being aggrieved by the rejection of his application for bail U/s.439 Cr.P.C. by the learned Court of the Sessions Judge-cum-Special Judge, Phulbani, by order dated 08.02.2021 in the aforementioned case, the present BLAPL has been filed.
6. Learned counsel for the petitioner submits that he was driving the Auto and though the ownership thereof stands in the name of his father.

7. It is submitted that on being engaged, he was taking the passenger who is the co-accused. And the seized contraband does not belong to him and as the driver he could not have prevented the passenger from carrying his luggage which unfortunately to his ill-luck turned out to be contraband beyond permissible limit.

8. It is submitted that as such, conscious exclusive possession cannot be attributed to the petitioner.

9. Learned counsel for the State relying on the statutory bar under Section 37 of the NDPS Act submits that from nature of the seizure and the role ascribed to the petitioner, plea of innocence as advanced cannot be taken into consideration at this stage and the bail application is liable to be rejected.

10. On a conspectus of materials on record and taking into account the submission of the learned counsel for the petitioner that he has no Criminal proclivity and since from the manner of the seizure it cannot be stated that the petitioner is in conscious exclusive possession of the contraband, this Court directs the petitioner to be released on bail on such terms to be fixed by the learned Court in seisin over the matter.

11. While enlarging the petitioner on bail, learned Court below shall find out as to whether the petitioner has any criminal antecedent.

12. If such antecedents come to the fore, the present order granting bail will stand recalled automatically without any further reference of this Court.

13. Accordingly, the present BLAPL stands disposed of.

14. Urgent certified copy of this order be granted as per rules.

(V. NARASINGH)
Judge