

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.2517 of 2021

Rustam Khan.

....

Petitioner

M/s. Bibhuti Bhusan Panda, P.K. Patra,
Sr. Pattnaik, Advocates

-versus-

State of Odisha.

....

Opposite Party

Addl. Standing Counsel

**CORAM:
JUSTICE S. PUJAHARI**

**ORDER
18.05.2022**

**Order
No.**

05. **1.** The petitioner who has been charge-sheeted as absconder along with co-accused persons for the offences under Sections 20(b)(ii)(C)/25/29 of the NDPS Act, 1985, in C.T. Case No.36 of 2020 pending in the court of the learned Sessions Judge-cum-Special Judge, Phulbani, seeks for pre-arrest bail under Section 438 of Cr.P.C.
- 2.** Heard the learned counsel for both the sides.

3. It is alleged that on 08.07.2020 at about 6.40 P.M. while contraband 'Ganja' was being transported in one UBER Car bearing registration No.OD-33X-1703 with one Splender Plus bike bearing registration No.OD-12C-6177 escorting the said car on S.H. Road near Phiringia Chhak, Phulbani, a raid was conducted by Phiringia Police and 'Ganja' weighing more than 100 Kgs. was recovered and seized from the aforesaid car by the Informant-police officer on observing legal formalities, and on the basis of the F.I.R. drawn, investigation was taken up and on completion of the investigation, police submitted charge-sheet for the offences aforesaid, against five accused persons including the present petitioner who was the registered owner of the Car that was allegedly engaged in the transportation of 'Ganja'. The petitioner has been shown as absconder in the charge-sheet.

4. Admittedly, the petitioner was not present at the spot at the relevant time, and as it appears, he

has been indicted for the offences for the reason that he happened to be the registered owner of the Car by which the contraband 'Ganja' was allegedly transported. It is also not disputed that at the relevant time the said vehicle was used a UBER ride. The petitioner contends that since he had engaged the car in UBER Travel Agency, the alleged transportation was beyond his knowledge, and that at the relevant time he was staying at Bhubaneswar. Hence, he seeks for pre-arrest bail.

5. The bail plea of the petitioner is opposed by the learned counsel for the State on the ground of gravity of the indictment. He further submits that charge-sheet having already been filed showing the petitioner as absconder, he ought to have surrendered before the Court below instead of seeking pre-arrest bail before this Court.

6. UBER is a digital platform where those who drive and deliver can connect with riders. In cities

where such platform is available, one can use the UBER App to request a ride. In that view of the matter, the petitioner who admittedly was the owner of the vehicle used in transportation of contraband 'Ganja', can not base his bail plea on the mere fact that the vehicle was engaged in UBER travel agency, inasmuch as Section 37(1) of the N.D.P.S. Act provides that when a person is accused of an offence involving commercial quantity of Narcotic Drugs and Psychotropic Substance, he should not be released on bail without the Public Prosecutor being given a chance to object his prayer for bail and if the Public Prosecutor makes objection to such prayer, without the Court recording its satisfaction to the fact that there are reasonable grounds for believing that he is not guilty of the offence alleged and he is not likely to commit such offence, if released on bail and this is a prayer for pre-arrest bail and it is hard to record the satisfaction of the twin conditions provided from the materials on record.

7. In the facts and circumstances, this Court does not find it to be a fit case to allow pre-arrest bail to the petitioner.

8. Hence, the ABLAPL stands dismissed.

(S.Pujahari)
Judge

MRS

