

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.2759 of 2022

Niranjan Adabari

....

Petitioner

Mr. Prasanta Kumar Nanda, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. Sitikant Mishra, A.S.C.

CORAM:

JUSTICE A.K.MOHAPATRA

ORDER

24.08.2022

Order No.

08. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner and learned Addl. Standing Counsel for the State.
3. This is an application under Section 439, Cr.P.C. filed by the Petitioner for bail in connection with Orkel P.S. Case No.105 of 2021 corresponding to Spl. G.R. Case No.58 of 2021 pending in the Court of learned Sessions judge-cum-Special Judge, Malkanagiri, involving offence under Sections 20(b)(ii)(C) of the N.D.P.S. Act.
4. Learned counsel for the Petitioner submits that the Petitioner is in custody since 17.06.2021. In the meantime investigation has been completed and charge-sheet has been filed in the case. He further submits that while doing patrolling duty, the police party found certain plastic bags kept on the public road. When the police party reached at the spot, some persons tried to flee away from the

spot, but the present Petitioner was nabbed by the police from the spot. He further submits that admittedly the procedure under Sections 42 and 50 of the NDPS Act has not been complied with in this case. In such view of the matter, he draws attention of this court to the F.I.R. lodged by the S.I. of Police, Orkel P.S., where it has been specifically mentioned that he has not followed the mandatory procedure of Section 42 and 50 of the NDPS Act, although he has explained the ground for such non-compliance.

5. Learned counsel for the Petitioner further submits that although the Petitioner is in custody since 17.06.2021, trial has not yet commenced, and further, there is no likelihood that the trial will commence in near future. On such ground, learned counsel for the Petitioner prays for bail of the Petitioner on any terms and conditions as would be deemed just and proper by the learned court.

5. Learned counsel for the State on the other hand strongly opposes to the bail application of the Petitioner on the ground that the Petitioner was arrested on the spot by the police while he was trying to flee away. However, learned counsel for the State does not dispute to the fact that the plastic bags containing contraband ganja were recovered from the public road. He further does not dispute to the fact that the mandatory provision under Sections 42 and 50 has not been followed by the police party, but he submits that the same is not required to be considered at the stage of bail. In such view of the matter, learned counsel for the State seeks for rejection of the bail application.

6. Having heard learned counsels for both the parties, and upon careful consideration of the materials placed before this Court, and

taking into consideration the facts and circumstances leading to seizure of contraband articles and the procedure followed by the police party, this Court is of the view that the bar under Section 37 of the Act is not attracted to the facts of the present case. In such view of the matter, this Court is inclined to release the Petitioner on bail, and accordingly it is directed that the Petitioner shall be released on bail by executing bail bond of Rs.50,000/- (Rupees Fifty Thousand) with two local solvent sureties each for the like amount to the satisfaction of learned court in seisin over the matter, but subject to the following further conditions –

- (i) The Petitioner shall not be involved in any similar nature of offence, while on bail;
- (ii) He shall not tamper with the prosecution evidence or shall not try to threaten, terrorise or influence the prosecution witnesses in any manner whatsoever;
- (iii) He shall appear before the learned trial court on each date fixed for trial, without fail.
- (iv) He shall appear before the concerned P.S. once in a week, preferably between 10 A.M. to 1.00 P.M. specifically on Sundays, till conclusion of trial.
- (v) He shall not leave the jurisdiction of the court in session over the matter without specific permission of the court in that respect.

Violation of any of the conditions shall entail cancellation of bail of the Petitioner.

7. It is open for the learned court in seisin over the matter to impose any other conditions, as may be deemed just and proper in the facts and circumstances of the case.
8. The BLAPL is disposed of accordingly.
9. Urgent certified copy of this order be granted as per rules.

(A.K. Mohapatra)
Judge

S.K.Parida

