

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 2508 of 2022

Nabin Rout

***..... Petitioner
Mr. Sabyasachi Mishra, Adv.***

Versus

State of Odisha

***..... Opposite Party
Mr. S.N. Nayak, A.S.C.***

**CORAM:
JUSTICE SAVITRI RATHO**

**ORDER
18.05.2022**

Order No.

02. 1. Heard Mr. Sabyasachi Mishra, learned counsel for the petitioner and Mr. S.N. Nayak, learned Addl. Standing Counsel for the State who are present in Court.
2. This is an application under Section 439 of Cr.P.C. for grant of bail to the petitioner-Nabin Rout in connection with Jeypore Town P.S. Case No.109 of 2021 corresponding to T.R. Case No.31 of 2021 pending in the Court of learned District & Sessions Judge-cum-Special Judge, Koraput-Jeypore where charge sheet has been submitted for commission of offences punishable under Section 22 (b) of NDPS Act read with Section 18 (C) and 27 (b) (ii) of Drugs and Cosmetics Act, 1940 against the petitioner and three others.
3. This is the second journey of the petitioner to this Court seeking bail. His earlier application BLAPL No.5445 of 2021 had been rejected on 21.02.2022 granting liberty to the petitioner to move bail afresh after receipt of chemical examination report or if there is undue delay in completion of trial.
4. The prosecution allegation in brief is that on 30.04.2021 at 11.35 P.M., the S.I., namely, B.Ch. Behera of Jeypore Town P.S. reported regarding seizure of one Nokia keypad mobile (IMEI No.35448799394851 and 355822092394848) and cash of Rs.350/- from accused Ram Harijan, cash of Rs.1400 from the petitioner-Nabin Rout, one Appol mobile having No.7008934166 and IMEI No.869066042291139 and 869066042291121 and cash of Rs.8,900/- from the co-

accused, Dillip Kumar Hantal and one Realme mobile having No.7008382001 (IMEI No.8691330043397297 and 889133043397289, one money purse having cash of Rs.41,000/- one HDFC ATM card having No.6521660238273948 from the co-accused, Sushanta Mahanty. The S.I. also seized 790 ampoules of Pentazocine injection (23.7 grams) and one Maruti Car Wagon R bearing Registration No.OD-10L-1297 from the joint and exclusive possession of above noted accused persons.

5. Mr. Sabyasachi Mishra, learned counsel for the petitioner submits that the petitioner is in custody since 30.04.2021 and in view of the fact that charge sheet has been filed against him under Section 22 (b) of NDPS Act and charge has also been framed under the same section , the bar under Section 37 of the NDPS Act will not be attracted and that in the meanwhile, two other co-accused persons standing on similar footing have been released on bail by this Court -Ram Harijan has been granted bail by order dated 10.03.2022 passed in BLAPL No.706 of 2022 and Susanta Kumar Mohanty has been granted bail by order dated 23.03.2022 passed in BLAPL No. 5729 of 2021. He further submits that the prosecution has not yet filed/submitted the chemical examination report and trial is yet to start as witnesses are not turning up on the dates fixed as would be apparent from a perusal of the orders passed by the trial court .

In BLAPL No.2503 of 2022 filed by co - accused Dillip Kumar Hantal which is listed today, he has filed a memo alongwith the certified copy of the ordersheet T.R. Case No.31 of 2021 pending in the Court of learned District & Sessions Judge-cum-Special Judge, Koraput-Jeypore today .

6. Mr. S.N. Nayak, learned Addl. Standing Counsel for the State opposes the prayer for bail stating that a huge quantity of Pentazocine which is used as a narcotic and is dangerous for human consumption without a prescription , was being transported without supporting documents for which the petitioner should not be granted on bail. He however, does not dispute the fact that two other co-accused persons standing on similar footing as the petitioner have been granted bail by this Court in the meanwhile and in case of Section 22(b) of the NDPS Act , Section 37 of the Act will not be a bar for considering the application for bail. He further

submits that in spite of letter being sent to the I.O, asking for the chemical examination report , the same has not been received till date .

7. Perusal of the order sheet of the learned trial Court reveals that no witness was present on 23.03.2022 and 25.03.2022 for which summons was issued to C.SW.s 2,3,4,7, 8,9,10 and 11 fixing 26.04.2022 and 27.04.2022 for trial . But no witness was present on 26.04.2022 and 27.04.2022 for which the case is now posted to 16.05.2022 and 17.05.2022 for examination of witnesses . Since the chemical examination report has not been received till date , it would not be proper to assume that the amount of the narcotic drug seized should be considered to be of commercial quantity, when charge has been framed under Section 22 (b) of the NDPS Act.

8. Considering the above submissions, the nature of accusation against the petitioner, the period of his detention in custody , framing of charge under Section 22 (b) of the NDPS Act , delay in commencement of trial , failure of the prosecution to submit/ produce the chemical examination report and the release of other co accused persons standing on similar footing as the petitioner on bail by this court , I am inclined to allow this application and direct the petitioner to be released on bail .

9. Let the petitioner- Nabin Rout be released on bail on such terms and conditions as may be fixed by the learned Court below in seisin over the matter, including the following conditions:

- (i) He will not indulge in any criminal activity while on bail.
- (ii) He will not threaten or try to influence prosecution witnesses while on bail.
- (iii) He will remain present on each date the case is fixed for trial.

Violation of any condition will entail in cancellation of bail.

10. The BLAPL is accordingly disposed of.

11. Urgent certified copy of this order be granted on proper application.

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Savitri Ratho)
Judge