

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.2061 of 2021

Gajanan Meher

.... Petitioner

Mr. R. Das, Advocate

-versus-

State of Orissa

.... Opp. Party

Mr. S. R. Roul, A.S.C.

**CORAM:
JUSTICE G. SATAPATHY**

**ORDER
09.11.2022**

Order No.

- 18.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. This is an application U/S. 439 of Cr.P.C. by the Petitioner for grant of bail in connection with P.R. No.82 of 2020-21 of Excise Station, Junagarh corresponding to C.T. Case No.06 of 2020 (NDPS) pending in the file of learned Additional Sessions Judge-cum-Special Judge of Dharamgarh, Kalahandi for commission of offence punishable U/S. 20(b)(ii)(C) of the NDPS Act, on the allegation of possessing 182 Kgs of contraband Ganja in his house.
 3. In the course of hearing of the bail application, Mr. R.K. Das, learned counsel for the Petitioner submits that if the allegation of recovery of contraband Ganja from the house of the Petitioner is considered to be true, then also the Petitioner cannot be said to have consciously possessed contraband Ganja in view of the facts, that the said house is a coparceners property belonging to joint family of the Petitioner, but the Investigating Agency has not clarified as to whose possession the said house is at present by taking the help of the

jurisdiction of Tahasildar nor has the Tahasildar clarified after due verification that the said property stands in the name of the predecessor of the Petitioner. It is also submitted that the recovery of contraband Ganja cannot be said to be found in exclusive conscious possession of the Petitioner and the Petitioner having been falsely implicated in this case may kindly be enlarged on bail. It is further submitted that the Petitioner was granted interim bail earlier but he has not misused the liberty so granted to him and thereby makes out a case for grant of bail. In relying upon the decision of this Court in ***Jagannath Laharia Vrs. State of Orissa; 124 (2017) CLT 825***, learned counsel for the Petitioner submits that after taking into consideration the seizure of contraband Ganja from joint family house, this Court had granted bail to the accused-Petitioner therein and, therefore, the Petitioner herein standing on said footing is also entitled to bail. In summing up his argument, learned counsel for the Petitioner prays to grant bail to the Petitioner.

4. In repelling above submissions, Mr. S.R. Roul, learned counsel for the State submits that at the relevant time, the Petitioner was found in possession of the house from which contraband Ganja was recovered and the Tahasildar has also clarified that the property in question was already divided amongst the co-sharers of the family members of the Petitioner and, therefore, the contraband Ganja found in the said house belongs to the Petitioner. It is further submitted that the Petitioner, thus, having been found in conscious possession of commercial quantity of Ganja should not be released on bail in view of the bar under section 37 of the NDPS Act.

5. After having considered the rival submissions upon reference to the allegation on record, there appears allegation against the Petitioner for possessing 182 Kgs of contraband Ganja in his house, but a plea was taken in the course of hearing of bail application that since the contraband Ganja was recovered from the joint family house of the Petitioner, the said possession cannot amount to conscious possession of the Petitioner. It is undoubtedly advanced for the Petitioner that the transit of contraband Ganja to Court, it was not explained as to whose custody the said contraband Ganja was kept for one day, but such pleas disputing the exclusive possession of contraband Ganja by the Petitioner and delay in transit of contraband Ganja to the Court can be answered after due appreciation of evidence in the course of a trial and the decision relied upon by the Petitioner being rendered without any reference to Section 37 of NDPS Act has no binding precedence value and thereby, cannot be made applicable to this case at hand in view of the facts that commercial quantity of contraband Ganja has allegedly been seized from the Petitioner in this case and the law laid down in ***Satpal Singh Vrs. State of Punjab; (2018) 13 SCC 813, State of Kerala and others Vrs. Rajesh and others; (2020) 12 SCC 122 and Narcotics Control Bureau Vrs. Mohit Agarwal; 2022 SCC Online SC 891.*** The contraband Ganja seized in this case is allegedly to the tune of 182 Kgs of contraband which is coming under commercial quantity and Section 37 of NDPS Act operate as a bar for grant of bail unless the twin conditions enumerated therein are fully satisfied by the Petitioner.

6. In view of the above facts and taking into consideration the allegations on record against the Petitioner for possessing 182 Kgs contraband Ganja in his house and the fact that when the bail application is opposed to by the learned counsel for the State, it is hard for this Court to record satisfaction on conspectus of materials on record to the affect at this stage that the accused is not guilty of the offence and he would not repeat the same again and keeping in view the larger interest of society to protect the gullible person from the menace of drugs, this Court is not inclined to grant bail to the Petitioner.

7. Hence, the bail application of the Petitioner stands rejected. At this stage, learned counsel for the Petitioner prays for grant of liberty to the Petitioner to renew his prayer for bail after examination of some material witnesses. In view of such prayer, aforesaid liberty is granted to the Petitioner.

8. Accordingly, the BLAPL stands disposed of.

9. Issue urgent certified copy of the order as per Rules.

(*G. Satapathy*)
Judge