

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.3524 of 2021

Jikaniya Majhi

....

Petitioner

Mr. Devashis Panda, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. M.K.Mohanty, A.S.C.

**CORAM:
JUSTICE A.K.MOHAPATRA**

**ORDER
07.09.2022**

Order No.

10. 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 Puttasingh P.S. Case No.20 of 2021 corresponding to T.R. Case No.37 of 2021 pending in the Court of learned Addl. Sessions Judge-cum-Special Judge, Gunupur, involving offence under Sections 20(b)(ii)(C), and 29 of the N.D.P.S. Act.
4. Learned counsel for the Petitioner submits that the Petitioner is in custody since 08.02.2021. In the meantime investigation has been completed and charge-sheet has been filed in the case. He further submits that in the F.I.R. it has been alleged that the police party found yellow coloured jarry bags stacked at the 1st lane situated

at the end of the village road. It is further submitted that some people were standing near those jarry bags, and when the police party reached the spot, those people ran away from the spot, but the police could manage to nab the present Petitioner. On being asked by police, the Petitioner disclosed his name and address, who is a local resident. It is further submitted that, on verification of the said jarry bags, the police found contraband ganja were kept in those bags weighing to the tune of 278 kgs 830 gms. It is submitted that, the only allegation against the present Petitioner is that he was standing in the locality and on seeing the police party, out of fear he started running away from the spot along with many other persons.

In such view of the matter, learned counsel for the Petitioner submits that the allegation is not sufficient to establish the conscious possession of contraband ganja by the Petitioner. It is further submitted by learned counsel for the Petitioner that the petitioner does not have similar nature of criminal antecedent. Learned counsel for the Petitioner also submits that although charge-sheet has been filed since long, but trial has not yet commenced in the case, for which the Petitioner is languishing in custody without trial having been commenced.

5. Learned counsel for the State on the other hand strongly opposes to the bail application of the Petitioner on the ground that the allegation against the Petitioner is very serious in nature. He submits that illegal trafficking of contraband ganja is rising in the State in present days. In view of such situation, learned A.S.C. submits that no leniency should be shown to the accused involved in

the offence of present nature, and therefore the Petitioner should not be enlarged on bail.

6. Having heard learned counsels for both the parties, and taking into consideration the materials placed before this Court, I am of the considered view that the ganja was seized from a public road and the Petitioner was arrested while he was running from the spot. Except the aforesaid allegation, there is no other material to implicate the Petitioner in the present case.

7. Considering all the aspects, this court is of the further opinion that it cannot be concluded at this stage that the alleged ganja was recovered from the exclusive possession of the present Petitioner. Therefore, 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 offence of similar nature, 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.

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

8. 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.

9. The BLAPL is disposed of accordingly.

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

(A.K. Mohapatra)
Judge



RKS