

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 2447 of 2021

***Bhabani Shankar Mohanty @
Kabi***

Petitioner

Mr. D. Das, Advocate

-versus-

State of Odisha

Opposite Party

Mr. Karunakar Gaya, ASC

CORAM: JUSTICE V. NARASINGH

**ORDER
25.04.2022**

Order No.

07.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned counsel for the State.
3. The petitioner is an accused in C.T. Case No.06 of 2021, on the files of learned Sessions Judge-cum-Special Judge, Jagatsinghpur, arising out of Paradeep Excise Station P.R. Case No.57 of 2020-21, under Sections 20(b)(ii)(c) of the NDPS Act and is in custody since 16.01.2021.
4. Being aggrieved by the rejection of his application for bail U/s.439 Cr.P.C. by the learned Sessions Judge-cum-Special Judge, Jagatsinghpur, by order dated 04.03.2021 in the aforementioned case, the present BLAPL has been filed.
5. Learned counsel for the petitioner submits that he is in custody since 16.01.2021. It is stated that from the circumstances of

seizure exclusive conscious possession cannot be attributed to the petitioner. It is pleaded that since the petitioner has no criminal proclivity he may be released on bail.

6. Per contra the learned counsel for the State relying on the bar contained under Section 37 of the NDPS Act, states that in view of the quantity of contraband seized the plea of innocence as advanced cannot be taken into consideration at this stage.

7. During the course of submission learned counsel for the petitioner placed on record deposition of one of the independent witnesses who has not supported the prosecution.

8. Taking note of the deposition of independent witnesses so examined and the manner in which the seizure has been affected this Court directs the petitioner to be released on bail on such terms to be fixed by the learned Court in seisin over the matter to ensure his appearance on each date of trial.

9. It is needles to state here that if it comes to fore that the petitioner has any criminal antecedent it shall be open for the learned trial court to commit the petitioner to custody without any further reference to this Court.

10. The present BLAPL stands disposed of accordingly.

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

(V. NARASINGH)
Judge

Santoshi