

IN THE HIGH COURT OF ORISSA AT CUTTACK
BLAPL No.2483 of 2021

K. Lyer

....

Petitioner

Dr.Simanchala Ranjit, Advocate

Versus

State of Odisha

....

Opp. Party

Mr.P.K.Mohanty, ASC

CORAM:

JUSTICE SAVITRI RATHO

ORDER

08.02.2022

Order No.

06.

1. This matter is taken up by hybrid mode.
2. Heard Dr. S.Ranjit, learned counsel for the petitioner and Mr.P.K.Mohanty, learned Addl. Standing Counsel for the State.
3. This is an application under Section 439 of Cr.P.C. for grant of bail to the petitioner-K.Lyer in connection with Jeypore Sadar P.S. Case No.233 of 2020 corresponding to T.R. Case No.89 of 2020 pending in the Court of learned Sessions Judge-cum-Special Judge, Koraput-Jeypore for commission of offence punishable under Section 20 (b) (ii) (c) of the N.D.P.S. Act.
4. The prayer for bail of the petitioner has been rejected on 29.01.2021 by the learned Special Judge, Jeypore in T.R. No.89 of 2020.
5. The prosecution allegations in brief are that on 01.12.2020 at about 11.34 a.m., the O.I.C. Jeypore Sadar Police Station received credible information regarding transportation of contraband Ganja in a Wagon R Car bearing Registration No.HR-26AR-5932 wrapped in brown color Cello tape and kept on the back seat and bonnets and there are two occupants in the car. After reducing the information into writing in compliance of Section 42 (1) of N.D.P.S. Act, the S.I. sent relevant Station Diary Entry to the

Superintendent of Police, Koraput and SDPO, Jeypore. As there was no time to obtain a search warrant from the competent court, the OIC directed the S.I., Jeypore Sadar P.S. along with ASI to proceed to Patraput Chhak to intercept the car. On the way, they picked up two local witnesses, namely, Rabi Bagh and Nanda Harijan and Weigh man Sanjaya Chandra Karkora alongwith his weighing machine. They reached Patraput Chhak at 12.20 p.m. and blocked the road. Immediately at 12.30 p.m., they found the Wagon R car coming from Lamtapur side in high speed. They signaled the said car to stop but the accused person did not do so and drove ahead with high speed towards Jeypore. The police party chased the vehicle and detained after a little distance. The two persons sitting inside the vehicle, got down and tried to run away but were apprehended. They disclosed their names to be G.Murugan and K. Lyer (the present petitioner). They gave ambiguous replies to questions. So the car was searched and some packets wrapped with brown colour cello tape kept in the back seat and bonnet of the car from which acute smell of ganja was emanating were found. The accused persons on interrogation admitted that they were doing such contraband ganja business in clandestine manner with assistance of outside traders and further disclosed that they collected the said ganja to transport the same to New Delhi and to sell them in their area at higher price @ Rs.10,000/- per kg for their pecuniary gain. They also confessed that they had concealed 60 Kg of ganja in the truck for transporting the same to New Delhi. As they did not have any licence or authority for possession of the ganja, their personal search was taken after complying with the provisions of the NDPS Act. They were asked in writing for their consent to be searched in presence

of Executive Magistrate or a Gazetted Officer of police department in compliance to Section 50 of the N.D.P.S. Act. They opted in writing to be searched in presence of an Executive Magistrate. On requisition, the learned S.D.J.M., Jeypore was requested to depute an Executive Magistrate to remain present during search and seizure of ganja at the spot. At 1.05 p.m., Smt. Snigdha Ranni Polei, ORS, Asst. Collector of Sub-Collector office, Jeypore arrived at the spot. On personal search of the petitioner, a cash of Rs.1800/- of different denomination and his aadhar card was recovered and ganja was found in the car was weighing and total ganja including packing weighing came to 57.200 grams and only ganja weighing 56.400 grams. As the ganja was recovered from the exclusive and conscious possessions of the accused persons, the ganja was seized from the car bearing registration No.HR-26AR-5932 in the presence of witnesses, weigh man and gazetted officer and signatures of the accused persons taken on the seizure list. The petitioner and co-accused were arrested and FIR was prepared on the spot and sent to the police station along with seized articles.

6. Dr. Ranjit Samal, learned counsel for the petitioner submits that the petitioner is in custody since 01.12.2020 and while making seizure of said ganja, the statutory provision has not been followed for which the petitioner is entitled to be released on bail. He further submits that the chances of starting trial in the near future is very bleak, for which the petitioner should not be detained in custody any further as investigation has been completed. He further submits that ganja has not been seized from the exclusive conscious possession of the petitioner as they were outside the car and ganja has been seized from the car.

7. Mr. P.K.Mohanty, learned Addl. Standing Counsel opposes the prayer for bail stating that commercial quantity of ganja has been seized from the exclusive conscious possession of the petitioner and the co-accused for which restrictions contained under Section 37 of the N.D.P.S. Act are attracted. The petitioner therefore is not entitled for bail. He further submits that the petitioner and the co-accused were the occupants of the car from which contraband ganja has been recovered and witnesses have stated that they got down from the car and started running on seeing the police personnel but they were caught. Hence the plea that the petitioner was unaware that ganja was being transported in the car and was not in exclusive conscious possession is not correct.

8. Considering the submissions of learned counsel for respective parties, the quantity of ganja and the circumstances in which the ganja was seized and the bar contained in Section 37 of the N.D.P.S. Act, I am not inclined to grant the prayer for bail at this stage.

9. The BLAPL is accordingly rejected.

10. However, considering the fact that the petitioner is in custody for more than 14 months, the learned trial court is requested to expedite the trial.

11. A copy of this order be sent to the learned Sessions Judge-cum-Special Judge Koraput-Jeypore for compliance.

12. The BLAPL is dismissed with the aforesaid observation.

13. In view of the dismissal of the bail application, the I.A. No.663 of 2021 is also dismissed.

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(Savitri Ratho)
Judge