

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**BLAPL No.2524 of 2021**

***Lingaraj Meher***

*....*

***Petitioner***

Mr. Milan Kanungo,  
Senior Advocate

*-versus-*

***State of Odisha***

*....*

***Opp. Party***

Mr. D.K. Pani,  
Addl. Standing Counsel

**CORAM:  
JUSTICE S.K. SAHOO**

**ORDER  
11.02.2022**

**Order No.**

05. This matter is taken up through Hybrid Arrangement (Video Conferencing/Physical Mode).

Heard Mr. Milan Kanungo, learned Senior Advocate appearing for the petitioner and Mr. D.K. Pani, learned Additional Standing Counsel for the State of Odisha.

This is an application under section 439 of Cr.P.C. in connection with Special C.T. Case No.15 of 2020 arising out of Barpali P.S. Case No.75 of 2020 pending in the Court of learned Sessions Judge -cum- Special Judge, Bargarh for offences punishable under sections 20(b)(ii)(C)/25/29 of the N.D.P.S. Act, section 25 of the Arms Act and sections 274/275/120-B of the Indian Penal Code.

The petitioner moved an application for bail before the Court of learned Sessions Judge, Bargarh, which was rejected on 23.02.2021.

Learned counsel for the petitioner submitted that the petitioner is in judicial custody since 21.03.2020 and it is the prosecution case that on 21.03.2020, the S.I. of Police, Barpali police station along with other police officials getting reliable information regarding illegal transportation of ganja and cough syrup, organized naka checking on N.H.26 at the outskirts of Barpali town and during checking of the vehicles, they found three vehicles coming one after another and from one Maruti Eeco vehicle, two accused persons were found present and they are Sk. Mainudin and the present petitioner and from the vehicle, 22 kg. and 100 grams of contraband ganja was found. It is further submitted that the co-accused Sk. Mainudin, who was with the petitioner in the Maruti Eeco vehicle has already been released on bail by this Court in BLAPL No.3402 of 2020 as per order dated 29.07.2021. Learned counsel further submitted that even though section 37 of the N.D.P.S. Act is a bar for grant of bail in a case of seizure of commercial quantity of ganja unless the twin conditions mentioned therein are satisfied but Article 21 of the Constitution of India is to be taken into account and in view of the period of detention of the petitioner in judicial custody and since there is no

such progress in the trial, the bail application of the petitioner may be favourably reconsidered on the ground of parity.

Learned counsel for the State opposed the prayer for bail mainly on the ground that while releasing the co-accused Sk. Mainudin on bail by another Bench of this Court, bar under section 37 of the N.D.P.S. Act has not been taken into account.

On perusal of the bail order of the co-accused Sk. Mainudin, it appears that only taking into account the factum of release of co-accused on bail and period of detention, the bail was granted. No discussion has been made relating to the bar under section 37 of the N.D.P.S. Act.

Section 37 of the N.D.P.S. Act opens with a non-obstacle clause. Non-obstacle clause must be given its due importance. The powers of the High Court to grant bail under section 439 Cr.P.C. are subject to the limitations contained in section 37 of the N.D.P.S. Act. Once the Public Prosecutor opposes the application for bail to a person accused of the enumerated offences under section 37 of the N.D.P.S. Act, in case, the Court proposes to grant bail to such a person, two mandatory conditions are required to be satisfied in addition to the normal requirements under the provisions of the Cr.P.C. or any other enactment. The Court must be satisfied that there are reasonable grounds for believing that the person is

not guilty of such offence and that he is not likely to commit any offence while on bail. The satisfaction of the Court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail. The expression "reasonable grounds" used in section 37(1)(b)(ii) of the N.D.P.S. Act connotes substantial probable causes which in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of such satisfaction. Whether the grounds are reasonable or not depend on the circumstances in a given situation. The Court while dealing with an application for bail is not called upon to record a finding of 'not guilty' but to see if there are reasonable grounds for believing that the accused is not guilty and record its satisfaction about the existence of such grounds. Additionally, the Court has to record a finding that while on bail, the accused is not likely to commit any offence and there should also exist some materials to come to such a conclusion.

Though one of co-accused has been granted bail by another Bench of this Court, but law is well settled that parity cannot be sole ground for grant of bail but it is one of the grounds for consideration of question of bail. A Judge is not bound to grant bail to an accused on the ground of parity even where the order granting bail to an identically placed co-accused

contains no cogent reasons or if the same has been passed in flagrant violation of well settled principle of law and the Judge ignores to take into consideration the relevant facts essential for granting bail. Such an order can never form the basis of claim of parity. It will be open to the Judge to reject the bail application of the applicant before him as no Judge is obliged to pass orders against his conscience merely to maintain consistency. The grant of bail is not a mechanical act.

In case of **Union of India -Vrs.- Rattan Malik @ Habul reported in (2009) 42 Orissa Criminal Reports (SC) 697** where Union of India filed an appeal before the Supreme Court challenging the order of the Allahabad High Court in suspending the sentence awarded by the trial Court to the respondent/accused for having committed offences under sections 8/27-A and 8/29 of the N.D.P.S. Act and granting bail, considering the limitation imposed in sub-clause (b) of sub-section (1) of section 37 of the N.D.P.S. Act, it was held that merely because, according to the learned Judge, nothing was found from the possession of the respondent, it could not be said at this stage that the respondent was not guilty of the offences for which he had been charged and convicted. It was further held that it seems that the provisions of the N.D.P.S. Act and more particularly section 37 of the N.D.P.S. Act were not brought to the notice of the learned Judge. It was

further held that the order passed by the High Court clearly violates the mandatory requirements of section 37 of the N.D.P.S. Act. The bail order was set aside with a liberty to decide afresh in the light of the limitation imposed.

When the mandatory provision under section 37 of the N.D.P.S. Act has not been considered while granting bail to the co-accused, I am of the humble view that such a bail order cannot form the basis of claim of party.

In my humble view, when the learned counsel for the petitioner has failed to satisfy on the basis of the factual position to conclude that the restriction under section 37 of the N.D.P.S. Act are fulfilled to warrant grant of bail and when prima facie material available on record to show that the petitioner along with the co-accused were carrying commercial quantity of ganja in the Maruti Eeco car and culpable mental state can be prima facie presumed under section 35 of the N.D.P.S. Act, in view of the nature and gravity of the accusation against the petitioner and taking into account the punishment prescribed for the offences under which charge sheet has been submitted, I am not inclined to release the petitioner on bail.

The observation made while disposing of this bail application relates to the materials collected during course of investigation and the findings

recorded herein are for the purpose of adjudication of this bail application only. This may not be taken as an expression of opinion on the merits of the case. The learned trial Court would be at liberty to decide the matter in the light of evidence which shall come on record after it is led de hors any finding recorded in this order.

Accordingly, the BLAPL stands dismissed.

Issue urgent certified copy as per Rules.

**( S.K. Sahoo )**  
**Judge**



RKM