

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No 3356 of 2022

Amit Kumar Sahoo *Petitioner*

*Mr. D. Panda,,
Advocate*

-Versus -

State of Odisha *Opposite Party*
*Mr. P.K. Maharaj,
Additional Standing Counsel*

**CORAM:
JUSTICE SASHIKANTA MISHRA**

**ORDER
29.06.2022**

**Order No.
3.**

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned Additional Standing Counsel for the State.
3. The petitioner is in custody since 01.03.2022 in connection with Model P.S. Khordha Case No. 85 of 2021 corresponding to T.R. Case No. 16 of 2021 pending in the court of learned 2nd Additional Sessions Judge, Khordha for the alleged commission of offence under Sections 20(C)/29 of NDPS Act.
4. The prosecution case is that the petitioner along with two other persons were transporting brown sugar weighing 654 grams in a Ecosports car bearing registration No. OD-02-X-9909 when they were apprehend by police.
5. Mr. D. Panda, learned counsel appearing for the petitioner has forcefully contended that the entire case is framed by police and has been falsely foisted against the petitioner. Referring to the FIR, Mr. Panda submits that two independent witnesses, namely, Amir Ranjan

Nayak, working as R.I. Paiktigiria and Susanta Kumar Samantsinghara, working as a Amin in the Tahasil Office, Khordha were deputed by the Tahasildar, Khordha to act as witnesses during the raid. In the meantime, trial has commenced during which the said two witnesses have been examined. In his testimony, Amir Ranjan Nayak, R.I., who was examined as P.W.1 has not supported the case of prosecution. Rather, he has specifically deposed that his signature was obtained four to five days after the occurrence in the Model Police Station at Khordha. He has also admitted in cross-examination by the defence that he cannot say anything about the contents of papers on which he had signed. Same is also the testimony of Susanta Kumar Samatasinghara, the other witness. Interestingly, the Assistant Collector, who acted as the Executive Magistrate during the search and seizure also turned hostile. Thus, according to Mr. Panda there is no legally acceptable evidence to even remotely show the complicity of the accused persons in the alleged occurrence. That apart, there is also serious discrepancy inasmuch as the registration number of the Ecosports car has been wrongly mentioned by the accompanying Constable, who was examined as P.W. 3.

6. Learned Additional Standing Counsel while opposing the prayer for bail submitted that notwithstanding the discrepancies pointed out on fact remains that huge quantity of contraband was recovered from the possession of the petitioner and therefore no leniency should be shown to them.

7. While it is true that prosecution` has alleged that huge quantity of brown sugar was being transported, yet there is, prima facie, no acceptable evidence to show that the same was recovered from the possession of the petitioner. This is a case where the witnesses, who

are said to be independent Government officers, have turned hostile including the Assistant Collector, who had acted in the capacity of Executive Magistrate. This is a serious matter and is for the appropriate authorities to take note of. However, in so far as the petitioner is concerned, there being no legally acceptable evidence to implicate then in the alleged occurrence, it would not be justified to detain them in custody any longer, more so as he has been in custody since 01.03.2021.

8. Taking into consideration all the above facts, I am inclined to allow the prayer for bail. Let the petitioner be released on bail on such terms and conditions as the court in seisin over the matter may deem fit and proper to impose including the condition that the petitioner shall appear before the trial court on each date of posting of the case and in case of even a single default, this order shall be treated as automatically cancelled and necessary order shall be passed by the trial court to take the petitioner into custody again. Further, the petitioner shall appear before the IIC of Khordha Model Police Station twice a week till conclusion of trial and such fact shall be certified by the IIC to the concerned court regularly.

9. The BLAPL is accordingly disposed of.

10. A free copy of this order be handed over to learned State Counsel for compliance.

(Sashikanta Mishra)
Judge