

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 1050 of 2022

Sk. Raja

....

Petitioner

Mr. Chandan Samantaray, Advocate

-Versus-

State of Orissa

....

Opposite Party
Mr. P.K. Rout, AGA

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
29.09.2022

Order No.

04.

1. Heard learned counsel for the petitioner and learned counsel for the State.
2. The present case is filed by the petitioner under Section 482 Cr.P.C. for quashing the order of issuance of NBWA dated 16th November, 2021 passed by the learned Sessions Judge-cum-Special Judge, Balasore in Special Case No.41 of 2020 arising out of STF P.S. Case No.09 of 2020 pending in the court of learned Sessions Judge-cum-Special Judge, Balasore in Special Case No.41 of 2020 arising out of STF P.S. Case No.09 of 2020 on the grounds stated therein.
3. Mr. Samantaray, learned counsel for the petitioner submits that petitioner was in judicial custody by the time the alleged incident had taken place and therefore, he cannot be claimed to be present at the spot while claiming so, he refers to a statement recorded under Section 164 Cr.P.C. as at Annexure-A/11 attached to

the additional evidence which alleged presence of the accused at the spot. It is submitted that order dated 19th January, 2022 passed in Special Case No.41 of 2020 which was after an application moved for recall of the cognizance order, however, indicated otherwise. It is further submitted that other accused persons involved in the incident have been granted bail. It is however submitted by Mr. Mohapatra, learned counsel for the State that there is adequate material on record to show that the petitioner was involved in the incident for supplying the contraband substance with other co-accused persons and therefore, he has been rightly chargesheeted and hence, the order of the learned court below should not be interfered with.

4. Mr. Mohapatra, learned counsel for the State submits that as per the statement of witnesses, it is made to suggest that the petitioner was supplying brown sugar through his own people. Whether the involvement of the petitioner is directly or indirectly even when he is in judicial custody can only be examined during enquiry or trial and therefore, the Court is of the view that at this stage simply on the strength of the statement of a witness under Section 164 Cr.P.C., a final conclusion cannot be drawn. Merely considering the above statement, the Court is not inclined to quash the impugned order under Annexure-1 passed by the learned Special Judge, Balasore. However, the Court is of the view that the petitioner should be granted liberty to surrender before the learned Sessions Court and move for bail. Accordingly, it is ordered.

5. Consequently, the CRLMC stands disposed of.

6. In the result, the petitioner is directed to surrender before the learned court below on or before 20th October, 2022 in STF P.S. Case No.9 of 2020 corresponding to Special Case No.41 of 2020 and in the event of surrender, his prayer for bail with a plea of

parity shall be considered and disposed of by the court as per and in accordance with law.

7. Learned counsel for the petitioner is directed to inform and intimate the court with regard to the date of surrender a day before its hearing so that the case diary and other materials can be made available to the court for consideration of the same and till the application so moved and order passed, it is further directed that no coercive action shall be taken against the petitioner till then.

8. Issue urgent certified copy as per rules.

U.K.Sahoo



(R.K. Pattanaik)
Judge