

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 2908 OF 2021

Kuna Nayak

..... *Petitioner*
Mr. Asit Kumar Jena, Adv.

-versus-

State of Orissa

..... *Opposite Party*
Miss S. Mishra, ASC

CORAM:
JUSTICE V. NARASINGH

ORDER
05.04.2022

Order No.
05.

1. This matter is taken up through Hybrid Mode.
2. The petitioner is an accused in connection with Special T.R. Case No. 135 of 2020 on the file of the Learned Sessions Judge-cum-Special Judge, Malkangiri, arising out of Motu P.S. Case No. 72 of 2020, for commission of alleged offence under Sections-20(b)(ii)(C) of N.D.P.S., Act and is in custody since 02.11.2020.
3. Being aggrieved by the order dtd. 03.11.2020 passed by the Learned Sessions Judge-cum-Special Judge, Malkangiri in T.R. No.135 of 2020, rejecting the bail application of the petitioner, the present BLAPL has been filed.
4. Heard Mr. Asit Kumar Jena, learned counsel for the petitioner and Miss S. Mishra, learned Additional Government Advocate for the State.

5. Learned counsel for the petitioner states that even accepting the prosecution case in entirety conscious possession cannot be attributed to the petitioner.

6. Learned counsel for the State per contra submits that, in view of the bar contained under Section-37 of the NDPS Act, it is not open to the Court to consider the submission made by the learned counsel for the petitioner.

7. Considering the rival contention and taking into account that the trial has not commenced and the petitioner is in custody since 02.11.2020, keeping in view the law laid down by the Apex Court in the case of ***Hussainara Khatoon & Ors vs. State of Bihar*** reported in ***1979 AIR 1369***, this Court directs that the petitioner to be released on bail in connection with Special T.R. Case No. 135 of 2020 on the file of the Learned Sessions Judge-cum-Special Judge, Malkangiri, arising out of Motu P.S. Case No. 72 of 2020, on such terms to be fixed by the learned Court in seisin of the matter including that; he shall appear in person before the jurisdictional Police Station once every month. The date of such first appearance to be fixed by the learned Court below.

8. The Bail Application thus stands disposed of.

9. Urgent certified copy of this order be granted as per rule.