

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.3616 of 2022

Bhagu Khemundu @ Ramu

....

Petitioner

Mr. A.R. Panda, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. P.C. Das, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

20.05.2022

Order No.

02.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner and learned Additional Standing Counsel for the State. Perused the case diary, F.I.R., charge-sheet and the statement of the witnesses.
3. The present bail application has been filed by the Petitioner under Section 439, Cr.P.C to release the Petitioner on bail, who is in custody in connection with Machhkund P.S. Case No.49 of 2021 corresponding to T.R. Case No.50 of 2021, pending in the court of learned Additional Sessions Judge-cum-Special Judge, Koraput for commission of offences under Sections 20(b)(ii)(C)/25/29 of the N.D.P.S. Act.
4. The bail application filed by the Petitioner before the learned Additional Sessions Judge-cum-Special Judge, Koraput, which was rejected by order dated 23.04.2022.
5. The prosecution story in brief as revealed from the F.I.R. in the

instant case is that on 04.06.2021 at 1.30 P.M. the police personnel reached the village spot of the alleged commission of offence and found one Container bearing Registration No.UP-23-T-1721 and seized inter alia contraband ganja of 830 Kgs. without plastic gunny bags and managed to nab one accused who has been in the judicial custody.

The said F.I.R. reveals that from the statement of one of the co-accused the present petitioner has been arrested with an allegation that he had loaded the contraband ganja in the aforesaid vehicle for its transportation and since 19.03.2022 he has been languishing in jail custody.

6. Learned counsel for the Petitioner submits that the Petitioner has been implicated in this case on the basis of the statement of the co-accused. He further submits that the police has submitted charge-sheet in the case against accused persons including the present Petitioner. Learned counsel for the Petitioner further submits that on the basis of the statement of the co-accused, the petitioner has been arrested and he further submits that the Petitioner was neither arrested from the spot nor any contraband ganja was seized from the exclusive and conscious possession of the Petitioner. As such, no case under the NDPS is made out against the Petitioner. He further submits that in view of the judgment delivered by the Hon'ble Supreme Court of India in the case of ***Tofan Singh vrs. State of Tamilnadu*** : reported in (2021) 4 SCC1 and order dated 10.01.2022 in the matter of ***State By (NCB) Bengaluru vrs. Pallulabid Ahmad Arimuta and another (Special Leave to Appeal (Criminal) No.242 of 2022)***. The statement made by the co-accused under Section 67 of the N.D.P.S. Act is not admissible in evidence.

Further, it is submitted by learned counsel for the petitioner that the co-accused person stated before the police that they have procured

contraband ganja from the present petitioner and as such, the petitioner is the supplier. He was also not present at the spot and nothing has been seized and recovered from the exclusive possession of the petitioner.

7. In such view of the matter, learned counsel for the Petitioner prays that the Petitioner may be released on bail. Learned counsel for the Petitioner further contended that the procedure has laid down in Sections 42 and 50 of the N.D.P.S. Act have not been followed in the present case. The Petitioner cannot be held guilty of offence alleged against him.

8. Mr. Das, learned counsel for the State, on the other hand, submits that the Petitioner was riding one of the motorcycles and managed to escape from the spot, as such, he could not be apprehend at the spot. However, basing upon the statement of the co-accused, he was arrested later on. Mr. Das, further submits that a clear case is made out against the Petitioner and the provisions as N.D.P.S. Act. He further submits that the trafficking of contraband substances are on the rise in the Malkangiri district of the State of Odisha. Therefore, no leniency should be shown to the Petitioner.

9. Having heard learned counsel for the parties, considering the period of detention of the Petitioner in custody, co-accused has been released on bail and the fact that the investigation has been completed and charge-sheet has been filed in the meantime and further the fact that the Petitioner has been apprehended on the basis of the statement made by the co-accused, this Court is inclined to release the Petitioner on bail.

10. Let the Petitioner be released on bail subject to furnishing a bail bond of Rs.1,00,000/-(Rupees one lakh) with a solvent local surety for the like amount to the satisfaction of the court in seisin over the matter.

However, this order is subject to the following conditions:-

- I. The Petitioner after releasing on bail shall not indulge in any criminal offence on similar nature;
- II. He shall not tamper with the prosecution evidence and shall not influence/threaten any of the prosecution witnesses in any manner;
- III. He shall appear before the local Police Station once in every fortnight preferably on 'Sunday' in between 10.00 A.M. to 1.00 P.M. till conclusion of trial; and
- IV. He shall not leave the jurisdiction of the trial court without specific permission of the court and shall appear before the trial court on each and every date the case is posted for trial without fail.

Violation of any of the terms and conditions shall entail cancellation of bail.

11. The Bail Application is accordingly disposed of.

Urgent certified copy of this order be granted on proper application in course of the day.

(A.K. Mohapatra)
Judge