

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 2918 of 2021

Rustam Khan

....

Petitioner

Mr. L. Dash, Advocate

-versus-

State of Odisha

....

Opposite Party

Ms. S. Mishra, ASC

CORAM: JUSTICE V. NARASINGH

ORDER
12.05.2022

Order No.

05.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned counsel for the State.
3. The petitioner is an accused in 2(a) CC Case No.15 of 2021, on the files of learned Sessions Judge-cum-Special Judge, Cuttack, under Sections 20(b)(ii)(C) of the NDPS Act and is in custody since 14.03.2021.
4. Being aggrieved by the rejection of his application for bail U/s.439 Cr.P.C. by the learned Sessions Judge-cum-Special Judge, Cuttack, by order dated 31.03.2021 in the aforementioned case, the present BLAPL has been filed.
5. Learned counsel for the petitioner submits that he is the driver of the offending vehicle from which the contraband was seized. It is submitted with further vehemence that the petitioner had no clue that the occupants who hired the vehicle were carrying contrabands.

6. It is submitted by the learned counsel for the petitioner that from the nature of the seizure it cannot be said that the petitioner has conscious and exclusive possession.

7. Per contra, the learned counsel for the petitioner submits that the plea of innocence as advanced cannot be taken into account at this stage. In view of the bar contained under Section 37 of the NDPS Act and there is no material on record to show that the petitioner had no knowledge as alleged.

8. On a conspectus of materials on record taking into account that the petitioner is in custody since 14.03.2021 and trial has not commenced, keeping in view, the law laid by the Apex Court in the case of *Hussainara Khatoon & Ors vs. State of Bihar* reported in *1979 AIR 1369*, this Court directs petitioner to be released on bail on such terms to be fixed by the learned Court in seisin over the matter.

9. Since it is submitted that the petitioner has no criminal proclivity, at the time of release the same shall be verified by the learned Court in seisin over the matter and if it comes to fore that the petitioner has any criminal antecedent, this order shall stand recalled without any further reference to this Court.

10. Accordingly, the BLAPL stand disposed of.

11. Urgent certified copy of this order be granted as per rules.

(V. NARASINGH)
Judge

Santoshi