

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.3947 of 2022

Kartika Sethi

....

Petitioner

Mr. Satyabrata Panda, Advocate

-versus-

State of Odisha

....

Opposite Party

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

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

01.12.2022

Order No.

07.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner and learned counsel for the State. Perused the F.I.R., case diary and other relevant documents as well as statement of the witnesses.
3. This is an application under Section 439 of the Criminal Procedure Code.
4. The Petitioner is an accused in Special Case(NDPS) No.12 of 2022 arising out of Kantamal P.S. Case No.47 of 2022 pending in the court of learned Additional District and Sessions Judge-cum-Special Judge, Kantamal for commission of offence punishable under Sections 20(b)(ii)(C)/29 of the N.D.P.S. Act.
5. The prosecution case, in brief, is that on 04.04.2022, the informant S.I. of Ghantapada Out-post had received a reliable information regarding transportation of Ganja. Then he along with his staffs rushed to the spot and found total six persons were coming from Matakupa side to Kamghat side in 3 motorcycle loaded with

Jari bags. Thereafter the raiding party able to apprehend two persons, namely the present petitioner and another Sankar Malik. On being search found 30 Kgs each from 5 jari bags containing ganja total 150 Kgs.

6. It is submitted by learned counsel for the petitioner that the Petitioner is languishing in custody since 22.04.2022. He further submits that the investigation has been concluded and charge sheet has been filed. However, trial has not yet been commenced.

7. It is further contended by learned counsel for the petitioner while the petitioner was in police custody, he was assaulted by the Jeep driver of the police station. He further submits that the driver of the Jeep ran over the leg of the petitioner as a result of which the petitioner sustained fracture injury and undergoing treatment. On that ground, this Court earlier granted interim bail to the petitioner. However, after expiry of the interim bail period, the same was extended subsequently and the petitioner has surrendered in judicial custody.

8. On the basis of the allegations made by the learned counsel for the petitioner, a report was called for from the District Judge, Boudh, who conducted an enquiry submitted the said report before this Court letter dated 22.09.2022. On perusal of the report, this Court observes that the District Judge after conducting enquiry has come to conclusion that the allegations against the police Jeep driver are not found to be correct rather the petitioner while he was chased by the police, he jumped out of the motorcycle and on the road sustained such injuries. However, this Court is not making any observation on such allegations at this juncture.

9. Further, learned counsel for the petitioner submits that the

petitioner is a carpenter by profession and he has been falsely implicated in this case by the police. Neither any incriminating material has been recovered from his exclusive possession nor he had arrested at the spot. It is further submitted that the petitioner belongs to the local and there is no chance of absconding and in the event, he is released on bail, he shall cooperate for early conclusion of trial appearing on each and every date fixed.

10. Learned Additional Standing Counsel on the other hand opposes the release of the Petitioner on bail on the ground that the Petitioner was arrested on the spot after chasing by the police and he further submits that in total six persons in three motorcycles were carrying bags each containing 30 Kgs. of contraband articles. He also submits that since the petitioner was arrested at the spot, bar under Section 37 of the NPDS Act to attract as such the petitioner is entitled to grant bail. Accordingly, learned counsel for the State urges for rejection of the bail application of the petitioner and such types of crime are rampant in the State and no leniency should be shown to the petitioner or similarly situated persons. Accordingly, learned Additional Standing Counsel prays for rejection of the bail application of the Petitioner.

11. Having heard learned counsel for the parties and upon careful considering the surrounding facts and circumstances, this Court is of the considered view that the quantity involved in the present case is more than commercial quantity i.e. 150 Kgs. However, so far as under Section 37 of the NPDS Act is concerned and the petitioner was arrested chased by the police. Further from the facts narrated in the F.I.R. it appears that initially, police intervened and stopped the aforesaid three motorcycles. Thereafter, the petitioner tried to escape

from the clutches of the police ran away from the spot. After chasing some distance, the petitioner was arrested and the contraband articles were not in the possession of the petitioner. Further learned counsel for the petitioner has made some counter allegations against the police and particularly torture meted out while he was in police custody and that the petitioner has sustained injury and torture.

12. Having heard learned counsel for the parties and considering the peculiar facts and circumstances of the case, further taking into consideration, the petitioner does not have any criminal antecedents and the trial is not likely to be concluded in near future, the Petitioner is directed to be released on bail on furnishing a bail bond of Rs.50,000/- (rupees fifty thousand) with two local solvent sureties each for the like amount to the satisfaction of the learned court in seisin over the matter and any other conditions as may be deemed just and proper by the learned court in seisin over the matter.

13. It is further directed that the bail granted to the Petitioner is subject to the condition that learned court below shall verify whether the Petitioner has any criminal antecedents of similar nature. In the event it is found that the Petitioner has any criminal antecedents of similar nature, this bail order shall automatically stand revoked.

14. The Bail Application is accordingly disposed of.

Urgent certified copy of this order be granted on proper application.

(A.K. Mohapatra)
Judge