

IN THE HIGH COURT OF ORISSA AT CUTTAC
BLAPL NO.3915 OF 2020

Bijaya Bagh

....

Petitioner

Mr. B.R. Tripathy, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. S.K.Nayak, AGA.

CORAM:

MR. JUSTICE D.DASH

ORDER

13.10.2022

Order No.

08.

1. This matter is taken up through hybrids arrangement (virtual/ physical) mode.

2. This is the second journey of the Petitioner, who is in custody in connection with STF Bhubaneswar P.S. Case No.09 of 2014 corresponding to Special Case No.03 of 2015 pending on the file of learned Addl. Sessions Judge-cum-Special Judge, Boudh, running for the commission of offence under section-20(b)(ii)(C) of the NDPS Act, in filing this application under Section 439 Cr.P.C. for reconsideration of the prayer for grant of bail to the Petitioner in the above mentioned case.

3. Learned Counsel for the Petitioner at the outset submits that the Petitioner although had been granted interim bail, he has not availed the benefit of the same and is continuing to be in custody.

4. Learned Counsel for the Petitioner submits that this Petitioner being arrested in the case is in custody since 27.07.2014 and the allegation against him is that he was in possession of 201 Kgs. of ganja. He further submits that said quantity of contraband ganja is said to have recovered from the bed room of the house of the accused. He further submits that the

Petitioner is not said to be the sole occupant of the house, when other adult members also used to reside therein and that in the absence of the Petitioner at home, the house is also frequented by the outsiders. It is submitted that when the Petitioner has been in custody for such a long period, the prosecution has failed to complete the trial within the period and now for such long detention of the Petitioner in custody, the members of his family are facing lot of difficulties and are not in a position to continue further in the absence of this Petitioner by their side without his aid and help. In view of all these above, according to him the bar contained under section-37 of the NDPS Act at this stage does not stand on the way of grant of bail to the Petitioner and therefore, when there remains no scope on the part of the Petitioner to flee from justice and the question of tampering the evidence does not arise as most of the witnesses are officials; he urges for reconsideration of the prayer for grant of bail to the Petitioner.

4. Learned counsel for the State opposes the move in view of quantity of ganja involved in the case. He however does not dispute the position with regard to the factum of arrest of the Petitioner on 27.07.2014 and being in custody since then. He submits to have received no instruction as to whether the Petitioner has availed the benefit of the order granting the interim bail.

5. Taking into account the submissions made; further keeping in view the surrounding circumstances especially, the period of detention of the Petitioner in custody; while being inclined to reconsider the prayer for grant bail to the Petitioner in the aforesaid case, it is directed that the Petitioner be released on

bail on such terms and conditions as deemed just and proper by the Court in seisin of the case with further conditions that:-

1. he shall appear in person before the Court in seisin of the case on each and every date of posting of the case till conclusion of the trial;
2. he shall not indulge himself in commission of similar activity; and
3. shall not leave the district of Kalahandi till conclusion of trial.

Violation of any of the condition(s) shall entail cancellation of bail.

It is however, made clear that in the event, the Petitioner having availed the benefit of the order dated 27.04.2022 has not yet surrendered before the Court below, this order of granting bail to the Petitioner shall not be given effect to and in that event the Court below would be at liberty to take appropriate coercive steps for apprehension of the Petitioner for his detention in custody.

6. The BLAPL is accordingly disposed of.
Issue urgent certified copy as per rules.

**(D. Dash),
Judge.**

Narayan