

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 4384 of 2022

Badola Mallick

....

Petitioner

Mr. M. Das, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. P.K. Maharaj, ASC

CORAM: JUSTICE V. NARASINGH

ORDER
02.09.2022

Order No.

02.

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 Special G.R. Case No.42 of 2020 arising out of Bhanjanagar P.S. Case No.654 of 2020 pending in the file of learned Additional Sessions Judge-cum- Special Judge, Bhanjanagar, under Sections 20(b)(ii)(C) of NDPS Act.
4. Being aggrieved by the Rejection of his application for bail U/s.439 Cr.P.C. by the learned Special Judge, Bhanjanagar, by order dated 13.01.2022 in the aforementioned case, the present BLAPL has been filed.
5. It is submitted by the learned counsel for the petitioner that though the petitioner is in custody since 22.12.2020 and charge-sheet has already been filed on 24.04.2021, there is no progress in the trial, hence it is stated, relying on the judgment of the Apex

Court in the case of **Hussainara Khatoon & Others Vrs. State of Bihar**, reported in (1980) 1 SCC 81, the petitioner is entitled to be released on bail.

6. Learned counsel for the State opposes the prayer for bail. It is submitted by the learned counsel for the State that the judgment in **Hussainara Khatoon** (Supra) shall not apply to a case where there is a statutory bar as in the case at hand under Section 37 of the NDPS Act, Hence merely because trial has not commenced, the petitioner is not entitled to be released on bail, when the quantity of contra band seized is beyond commercial quantity.

7. Taking note of the submission at the Bar and keeping in view that trial has not commenced, though the petitioner is in custody since 20.12.2020 and keeping in view the letter and spirit of the order of the Apex Court in the case of **Hussainara Khatoon** (Supra), this Court directs the petitioner to be released on bail on such terms to be fixed by the Court in seisin over the matter.

8. Additionally it is directed that the petitioner shall appear before the jurisdictional police station once every fifteen days till conclusion of the trial and certification of such appearance shall be submitted to the learned Court in seisin over the matter.

9. Accordingly, the BLAPL stands disposed of.

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

(V. NARASINGH)
Judge

Ayesha