

IN THE HIGH COURT OF ORISSA AT CUTTACK
BLAPL No. 3530 OF 2021

Ramesh Chandra Kousalya & another

..... ***Petitioners***
Mr. S.K.Mohanty, Adv.

-versus-

State of Odisha

..... ***Opposite Party***
Mr. K.K.Gayha, ASC

CORAM:
JUSTICE V. NARASINGH

ORDER
07.04.2022

Order No.
05.

1. This matter is taken up through Hybrid Mode.
2. Heard learned counsel for the parties.
3. The Petitioners are accused in connection with Baunsuni P.S. Case No. 31 of 2021 corresponding to C.T. Case No.121 of 2021 on the file of learned Sessions Judge-cum-Special Judge, Boud, registered for the alleged commission of offence under Sections 20(b)(ii)(C)/29 of the NDPS Act. The petitioners are in custody since 13.03.2021.
4. Being aggrieved by the rejection of their application for bail U/s 439 Cr.P.C. by the learned Sessions Judge-cum-Special Judge, Boudby order dated 23.03.2021, the present BLAPL has been filed.
5. Learned counsel for the petitioners place reliance on the order of this Court dated 25.11.2021 in BLAPL No. 8716 of 2021

by which the co-accused Chitta Ranjan Palai has been enlarged on bail and seeks bail on the ground of parity.

6. Learned counsel for the State on the basis of materials on record submits that the petitioners are not similarly circumstanced in as much as the person who has been enlarged on bail was not out the spot whereas the present petitioners were apprehended at the spot and the contraband is beyond permissible limit. Hence, in view of Section 37 of the NDPS Act, they are not entitled to any relief.

7. Considering the submission of learned counsel for the petitioners, that the petitioner No.2 is the driver and the petitioner No.1 is the helper in the vehicle, this Court feels that conscious exclusive possession in the factual matrix of the case at hand cannot readily attributed to them so as to attract the bar under Section 37 of the NDPS Act.

8. Taking into account that the petitioners are in custody since 13.03.2021 and the trial has not commenced and the petitioners stated to have no criminal proclivity, this Court directs that the petitioners are to be released on bail on such terms to be fixed by the court in seisin over the matter.

9. Accordingly, the BLAPL stands disposed of.

10. Issue urgent certified copy of this order as per Rules.

(V.Narasingh)
Judge