

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.4912 of 2022

Kumar Bapi Behera* *Petitioner

Mr.P.K. Nanda, Advocate

-versus-

State of Odisha* *Opp. Party

*Mr. Debasis Biswal,
Addl. Standing Counsel*

**CORAM:
JUSTICE S.K. SAHOO**

**ORDER
28.09.2022**

Order No.

01. This matter is taken up through Hybrid arrangement (video conferencing/physical mode).

Heard learned counsel for the petitioner and learned counsel for the State.

This is an application under section 439 of Cr.P.C. in connection with Nuagaon P.S. Case No.71 of 2021 corresponding to T.R. Case No. 07/03 of 2022 pending in the Court of learned Addl. Sessions Judge - cum- Special Judge, Nayagarh for offences punishable under sections 20(b)(ii)(c) and 29 of the N.D.P.S. Act.

The petitioner moved an application for bail before the Court of Addl. Sessions Judge -cum- Special Judge, Nayagarh, which was rejected on 17.05.2022.

Learned counsel for the petitioner submitted that the petitioner is in judicial custody since 02.06.2021 and his earlier bail application in BLAPL No. 6324 of 2021 was rejected as per order dated 21.12.2021 on the ground that commercial quantity of ganja was seized from his possession along with other co-accused persons and taking into account the bar under section 37 of the N.D.P.S. Act. Learned counsel further submitted that the total quantity of ganja seized from the possession of the accused persons was 20kg 600 grams and there were total eight nos. of packets in which ganja was packed and the weight of the containers was not excluded and therefore, there is possibility that if the weight of the containers would be excluded, then it would be lesser than commercial quantity and the same was not placed while arguing the earlier bail application and therefore, the bail application may be favourably reconsidered.

Learned counsel for the State was asked to obtain instruction from the I.O. in that respect.

Today, learned counsel for the State has produced the written instruction received from Inspector in-charge of Nuagaon police station from which it indicates that 20kg 600 grams of ganja was seized including the polythene wrappers and the weight seized ganja excluding polythene wrappers was

not ascertained during investigation.

Learned counsel for the State on verifying the case records, fairly submitted that there were total eight nos. of ganja packets inside a polythene packet from which samples were collected and therefore, it is apparent that the weight of the seized ganja excluding the polythene wrapper was not ascertained during the course of investigation.

In view of such state of affairs, it cannot be said that the actual quantity of ganja comes to commercial quantity.

Considering the submissions made by the learned counsel for the respective parties and after going through the records and the report submitted by the Inspector in-charge of Nuagaon police station, I am of the view that in a case of this nature, it cannot be said that the bar under section 37 of the N.D.P.S. Act is applicable. Thus, taking into account the period of detention of the petitioner in judicial custody, I am inclined to reconsider the prayer for bail and direct the petitioner to be released on bail.

Let the petitioner be released on bail in the aforesaid case on furnishing bail bond of Rs.50,000.00 (rupees fifty thousand) with two local solvent sureties each for the like amount to the satisfaction of the Court in seisin over the matter with further terms and conditions as the learned Court may deem just and

proper including the conditions that the petitioner shall appear before the learned trial Court on each date to which the case is posted for trial, shall not indulge in any criminal activities and shall not try to tamper with the prosecution evidence. Violation of any of the conditions shall entail cancellation of bail.

The BLAPL is accordingly disposed of.

Issue urgent certified copy as per Rules.

(S.K. Sahoo)
Judge



PKSahoo