

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 4060 of 2021

Sitaram Gemel

....

Petitioner

Mr. A.R. Panda, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. S.S. Pradhan, AGA

CORAM: JUSTICE V. NARASINGH

ORDER

24.06.2022

Order No.

09.

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 T.R. Case No.24 of 2021, pending on the files of learned Additional District & Sessions Judge-cum-Special Judge, Koraput, arising out of Semiliguda P.S. Case No.27 of 2021, under Sections 20(b)(ii)(C)/29 of the NDPS Act and is in custody since 18.02.2021.
4. Being aggrieved by the rejection of his application for bail U/s.439 Cr.P.C. by the learned Additional District and Sessions Judge-cum-Special Judge, Koraput, by order dated 23.04.2021 in the aforementioned case, the present BLAPL has been filed.
5. Placing reliance on the FIR which prima facie indicates that the petitioner was the driver of the escorting Auto and admittedly there being no recovery, it is submitted by the learned counsel for the

petitioner that the bar under Section 37 of the NDPS Act is not attracted in the case at hand.

6. Per contra, learned counsel for the State submits that the petitioner's complicity cannot be adjudged at this stage. Since the contraband was seized from the truck is beyond the commercial quantity and the petitioner as the escort is equally liable and at this juncture, it is not permissible for the Court to make a fine distinction regarding the complicity of the petitioner.

7. Considering the materials on record and taking into account the instructions of the learned counsel for the State that there is no material on record (CDR) to indicate that the petitioner was in contact with the principal accused who are in the truck and the period of custody since 18.02.2021 and the trial having not commenced and the petitioner not being a flight risk, this Court directs that the petitioner shall be released on bail on such terms to be fixed by the court in seisin over the matter.

8. Accordingly, the BLAPL stands disposed of.

9. Urgent certified copy of this order be granted as per rules.

(V. NARASINGH)
Judge

Santoshi