

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 5146 of 2022

Pankaj Bhoi

....

Petitioner

Mr. A.R. Panda, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. A. Pradhan, ASC

CORAM: JUSTICE V. NARASINGH

ORDER

29.07.2022

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 connection with C.T. Case No.34 of 2021, on the files of learned District & Sessions Judge-cum-Special Judge, Phulbani, arising out of Gochhapada P.S. Case No.31 of 2021 under Sections 20(b)(ii)(C) of the NDPS Act and is in custody since 25.04.2022.
4. Being aggrieved by the rejection of his application for bail U/s.439 Cr.P.C. by the learned District and Sessions Judge-cum-Special Judge, Kandhamal, Phulbani, by order dated 27.05.2022 in the aforementioned case, the present BLAPL has been filed.
5. It is the case of prosecution that the contraband was seized from the shop-cum-house premises one Prasana Bhoi and one Gajendra Bisi was apprehended at the spot and on interrogation, he has named the petitioner.
6. Learned counsel for the petitioner submits that accepting the prosecution case at its face value the basis of implication is on the

basis of co-accused statement and referring to the law laid down by the Apex Court in the case of *Tofan Singh vs. State of Tamil Nadu*, reported in (2020) 80 OCR 641, submits that since charge sheet has already been filed and he being in custody from 25.04.2022 his further continuance would be punitive.

7. Learned counsel for the State referring to the materials on record submits that it is clearly borne out that present petitioner is one of the person present at the spot and was only apprehended on the basis of NBW issue and conduct of the petitioner prima facie establishes his complicity and as such petitioner is not entitled to any relief and even otherwise in view of the bar under section 37 of the NDPS Act, he is not entitled to be released. In the factual matrix of case at hand the law laid down by the Apex Court in the Case of *Tofan Singh vs. State of Tamil Nadu*(Supra), is not attracted.

8. On a conspectus of materials on record, considering that the prime reason of implication is the co-accused statement and taking into account filing of charge sheet and period of custody, this Court directs the petitioner to be released on bail on such terms to be fixed by the learned Court in seisin over the matter.

9. It is submitted by the learned counsel for the petitioner that the petitioner has no criminal proclivity. While enlarging the petitioner on bail the learned court below shall verify such assertion. If it comes to the fore that the petitioner has any criminal antecedent this order shall stand recalled.

10. Accordingly, the BLAPL stands disposed of.

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

(V. NARASINGH)
Judge