

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 4265 of 2021

Malaya Nayak

....

Petitioner

Mr. S.K. Bhanjadeo, Advocate

-versus-

State of Odisha

....

Opposite Party

Ms. S. Mishra, ASC

CORAM: JUSTICE V. NARASINGH

ORDER

21.03.2022

Order No.

05.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned State counsel.
3. The petitioner is an accused in C.T. Case No.26 of 2021, on the files of learned Additional District and Sessions Judge-cum-Special Judge, Baliguda, arising out of Raikia P.S. Case No.42 of 2021, U/s.20(b)(ii)(c)/25/29 of N.D.P.S Act.
4. Being aggrieved by the rejection of his application for bail U/s.439 Cr.P.C. by the learned Special Judge-cum-Additional District & Sessions Judge, Baliguda, by order dated 27.04.2021 in C.T. Case No.26 of 2021, arising out of Raikia P.S. Case No.42 of 2021, the present BLAPL has been filed.
5. It is alleged that while petitioner was standing along with three others on receipt of credible information of transport

of contraband, they were apprehended along with a motor cycle which was likely to be used in the commission of the alleged offence.

6. Learned counsel for the petitioner states that from the nature of the seizure, it cannot be stated that the petitioner is in conscious possession and therefore, further continuance in custody is unwarranted and he prays to be enlarged on bail since he is in custody since 17.04.2021 and more so when trial has not commenced.

7. Learned counsel for the State referring to the memo of seizure and the contents of the FIR states that at this stage it cannot be said that the petitioner was not in conscious possession rather his conduct indicates that he is actively involved in transportation of contraband beyond the permissible limit, in a clandestine manner.

8. Taking into account the manner in which the seizure has been affected, this Court is of the considered opinion that it cannot be said with certainty that the petitioner is in exclusive conscious possession of the seized contraband.

9. Taking into account that the petitioner is in custody since 17.12.2021 and trial has not commenced, this Court directs the release of the petitioner on bail on such terms to be fixed by the Court in seisin of the matter.

10. Accordingly, the BLAPL stands disposed of.

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

(V. NARASINGH)
Judge

Santoshi

