

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.5850 of 2022

Abhimanyu

.... ***Petitioner***
M/s. P.S.Nayak, Advocate

-versus-

State of Orissa

.... ***Opp. Party***
M/s.P.K.Patnaik, A.G.A.

CORAM:

JUSTICE G. SATAPATHY

ORDER

10.11.2022

Order No.

- 02.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. This is an application U/S. 439 of Cr.P.C. by the Petitioner for grant of bail in connection with Bisam Katak P.S. Case No.127 of 2021 corresponding to T.R. Case No.105 of 2021 pending in the Court of learned Addl. Sessions Judge-cum-Special Judge, Gunupur for commission of offence punishable U/Ss. 20(b)(ii)(C) of the N.D.P.S. Act on the allegation of transporting 50Kgs. of contraband Ganja in a Honda City car.
 3. In the course of hearing of the bail application, Mr.P.S.Nayak, learned counsel for the petitioner submits that although the contraband Ganja was found in the Honda City car in which the petitioner was accompanied by another co-accused but since the Honda City car belongs to one Rinku Yadav, a Travel Agent who had directed the petitioner to drive the vehicle, the petitioner cannot be said to have knowledge about the transportation of contraband Ganja in the vehicle and thereby, he cannot be said to have been in conscious exclusive possession of contraband Ganja. It is further submitted that since the petitioner is in custody for more than a year

without any trial, his right to speedy trial has been seriously infringed in view of the law laid down by Apex Court in ***Hussainara Khatoon Vrs. Home Secretary, State of Bihar; (1980) 1 SCC 98***. It is further submitted that since the petitioner was not found conscious possession of contraband Ganja and no criminal antecedent having reported against him, Section 37 of the N.D.P.S. Act would not operate as a bar for grant of bail to the petitioner. On the above submissions, learned counsel for the petitioner prays to release the petitioner on bail.

4. On the contrary, learned counsel for the State seriously opposes the bail application of the petitioner by *inter-alia* submitting that the contraband Ganja seized in this case is to the tune of 50 Kgs. which is definitely coming under commercial quantity and the said contraband Ganja was found in the Honda City car which was being driven by the petitioner at the relevant time. Hence, it cannot, therefore, be said that the petitioner was not found in conscious possession of the contraband Ganja and the petitioner having been prima facie found to be in conscious possessions of commercial quantity of Ganja, he may not be granted bail in view of the bar U/S. 37 of the N.D.P.S. Act.

5. After having considered the rival submissions upon reference to the materials on record, there appears allegation against the petitioner for driving the Honda City car carrying contraband Ganja to the tune of 50 Kgs. which is coming under commercial quantity and when the bail application of the petitioner is opposed to by learned counsel for the State, it would be hard for this Court at this stage of case to record satisfaction of compliance of Section 37 of N.D.P.S. Act on a conspectus material placed on record to the effect

that there are reasonable grounds for believing that the accused is not guilty of such offence and he is unlikely to commit any offence while on bail. It is indisputably advanced on behalf of the petitioner that the petitioner is in custody since more than one year and in view of the law laid down in *Hussainara Khatoon(supra)*. the right of the petitioner to speedy trial has been seriously curtailed but in the case of *Narcotics Control Bureau Vrs. Mohit Agarwal; 2022 SCC Online SC 891*, the Apex Court after noticing the provision of Section 37 of N.D.P.S. Act rejected the bail application of the petitioner by observing that the length of the period of custody by itself not the consideration that can be treated as persuasive ground for granting bail to the accused U/S. 37 of N.D.P.S. Act and the accused therein had already suffered incarceration for one year and two months in jail by the time he was granted bail by the High Court but the appeal against such order was allowed by the Apex Court with quashing of order granting bail to the accused-respondent therein.

6. In view of the above facts and taking into consideration the allegations levelled against the petitioner for carrying contraband Ganja to the tune of 50 Kgs. in a Honda City car as a driver and keeping in view the bar U/S. 37 of N.D.P.S. Act which the petitioner has failed to satisfy, this Court does not consider it proper to grant bail to the petitioner.

Hence, the bail application of the petitioner stands rejected.

7. Accordingly, the BLAPL stands disposed of.

8. Urgent certified copy of the order be granted on proper application.

