

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.6302 of 20221

Rohit Kumar

....

Petitioner

*Mr.A.P. Bose, Advocate along with D.
Sahoo, Advocate*

-versus-

State of Odisha

....

Opposite Party

Mr. P.C. Das, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

13.10.2022

Order No.

- 03.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. Heard learned counsel for the Petitioner and learned counsel for the State. Perused the F.I.R., case record and other relevant materials placed before this Court for consideration.
 3. This is an application for bail under Section 439 of the Criminal Procedure Code for release of the petitioner on regular bail in connection with R.Udayagiri P.S. Case No.35 of 2021 corresponding to G.R. Case No.50 of 2021 pending in the court of learned Additional Sessions Judge-cum-Special Judge, Gajapati, Paralakhemundi for alleged commission of offence punishable under Sections 20(b)(ii)(C)/25/29 of the N.D.P.S. Act.
 4. The prosecution story, as culled out from F.I.R., is that one Mukesh Lakra at present working as the S.I. of police, R. Udayagiri Police Station, had lodged a plain paper F.I.R. before the I.I.C. of the

Police inter alia alleging therein that on 05.03.2021 at about 10.15 A.M. while they were performing patrolling duty at Chheligada and Mahendragada area, received an information that a black colour Scorpio vehicle bearing Registration No.UP-65-BE-2777 was going towards Berhampur via Mahendragada and that the said vehicle was carrying contraband ganja from Antarba area. Thereafter, the informant along with police team rushed to the spot and intercepted the vehicle. On search, they found the vehicle being driven by the present petitioner and another person was sitting beside him on front seat and on the middle seat of the vehicle one lady along with two minor female children were sitting in the vehicle. On being asked, the driver of the vehicle disclosed his name as Rohit Kumar, aged about 20 years and further disclosed that he is a resident under Fatwah P.S. Patna district in the State of Bihar and another person, who was sitting on the front seat disclosed his name Shanni Kumar Yadav and his residence is also in the State of Bihar. The lady, who was sitting in the said vehicle, identified herself as Punam Devi @ Poonam Devi. Thereafter, the vehicle was searched and the police team found four numbers of jerry bags filled with contraband ganja were kept on the back side of the vehicle. The present petitioner, who was the driver of the said vehicle further disclosed that on 03.03.2021 one Kundan of his locality, who is the owner of the said Scorpio vehicle, contacted the petitioner and other persons and asked them to proceed to Odisha along with lady to collect contraband ganja. Thereafter, the contraband ganja was seized and other statutory procedures were complied with.

5. It is submitted by Mr. Bose, learned counsel appearing for the petitioner that the petitioner is a young boy aged about 20 years is an

innocent and poor person and is the driver of the vehicle, who was engaged by the owner of the vehicle to transport the contraband ganja from Odisha to Bihar. It is further submitted that since the petitioner is a poor boy and thrives on whatever little bit he earns as a driver and as such could not defy the command of his employer and accordingly, while obeying order of his employer took up the job. It is further contended by learned counsel for the petitioner that the petitioner is in custody since 06.03.2021 i.e. almost more than one and half years. He further contended that the investigation has been concluded in the meantime and charge-sheet has been filed. It is further stated by learned counsel for the petitioner that the petitioner does not have any similar nature of criminal antecedents and on such ground, learned counsel for the petitioner urges that the petitioner be released on bail subject to such terms and conditions as would be found suitable by this Court and that there is no scope for absconding or fleeing away from the justice.

6. It is pertinent to mention here that on an earlier occasion, the petitioner had also approached this court by filing BLAPL No.7839 2021, which was disposed of by this Court vide order dated 23.02.2022 by directing the trial court to expedite the trial and to conclude the same preferably within a period of four months with liberty to the petitioner move a fresh bail application in the event trial is not concluded within the aforesaid period of four months.

7. It is further submitted by learned counsel for the petitioner that since the trial was not concluded within the aforesaid stipulated period, the petitioner again moved an application for bail before the court below and the same was rejected vide order dated 30.06.2022. In the rejection order, learned Additional Sessions Judge-cum-

Special Judge, Paralakhemundi, Gajapati has observed that the bail application filed by the petitioner is a successive one as the earlier bail application filed by the petitioner was rejected by him and that there is no change in circumstance and that out of total fifteen prosecution witnesses, three witnesses have been examined. Further, learned court below has observed that the delay in examination of the witnesses is due to non-appearance of the prosecution witnesses, who are all official witnesses.

8. On perusal of the rejection order, it appears that the trial could not complete the trial expeditiously due to delay in appearance of the official witnesses. Further, this Court called for status report from the court in seisin over the matter. Vide letter dated 1st of September, 2022, status report was submitted by the court in seisin over the matter before this Court and the same reveals that the delay caused in trial is due to delay in appearance of the official witnesses before the court for examination and it has also been stated that out of fifteen charge-sheeted witnesses, three witnesses have been examined so far and that vide letter dated 30.06.2022, the court in seisin over the matter had approached for extension of time by six months for conclusion of the trial. On perusal of the rejection order as well as status report, this Court is of the considered view that the prosecution lacks sincerity and seriousness in an early conclusion of the trial and as such, it has not been taken proper steps to ensure that the witnesses appear before the court in time pursuant to the summons. Considering the seriousness of allegation and the severity of punishment provided in the Statute a lot more is desired from the prosecution. Further, this Court sincerely hopes that the prosecution shall be more watchful and prompt in future.

9. Reverting back to the facts of the present case, learned counsel for the petitioner further submits that co-accused Punam Devi @ Poonam Devi has already been enlarged on bail by this Court in BLAPL No.11491 of 2021 vide order dated 22.06.2022 and on such ground, learned counsel for the petitioner urges that similar benefit should also be extended to the present petitioner, who is a young innocent and poor boy and has become a victim of the circumstance. He further assures this Court that in the event the petitioner is released on bail, he will not indulge in similar nature of offence in future.

10. Learned counsel for the State, on the other hand, vehemently opposes the prayer for bail of the petitioner and submits that innocence of the petitioner can only be established during trial. Further, it is submitted that illegal trafficking of contraband articles is rising day-by day in State of Odisha and no leniency should be shown to the petitioner or any other accused found guilty in such offences. He further submits that the petitioner is the driver of the vehicle and as such, he cannot deny the liability arising out of violation of law. In such view of the matter, learned counsel for the State urges that the bail application of the petitioner may be rejected at this stage.

11. Having heard learned counsel for the parties and upon conspectus of the facts and circumstances of the present case and further taking into consideration the fact that the petitioner is an innocent and a poor driver and he is a first time offender, who had been engaged by his employer to transport contraband ganja and further keeping in view the undertaking that he shall not indulge in similar nature of offence in future, this Court is inclined to exercise

the discretion in favour of the petitioner and accordingly, it is directed that let the petitioner be released on bail by furnishing a bail bond of Rs.50,000/- (rupees fifty thousand) with two local solvent sureties each for the like amount to the satisfaction of the learned court in seisin over the matter. Further, release of the petitioner shall also be subject to verification of similar nature of criminal antecedents of the petitioner. In the event, it is found that the petitioner has similar nature of criminal antecedents contrary to the submissions made by learned counsel for the petitioner, this order shall stand automatically revoked and shall not be given effect to. The release of the petitioner shall also be subject to the following additional conditions that:-

- I. The petitioner shall not be involved in any offence of similar nature;
- II. he shall not tamper with the prosecution evidence or try to threaten or influence the witnesses in any manner whatsoever;
- III. he shall not make any default in attending the court during trial on each date without fail;
- IV. he shall appear before the concerned Police Station once in a fortnight preferably on 'Sunday' in between 10.00 A.M. to 1.00 P.M. till conclusion of trial; and
- V. He shall not leave the jurisdiction of the Court in seisin over the matter and shall furnish his address and mobile number to the police from

time to time.

Violation of any of the terms and conditions shall entail cancellation of bail.

12. It is open for the court in seisin over the matter to impose other conditions as may be deemed just and proper.

13. It is made clear that if the petitioner fails to attend the court on the date fixed on a single occasion, this order shall stand automatically revoked and the learned court below is at liberty to issue N.B.W. against the petitioner forthwith.

14. The Bail Application is accordingly disposed of.

Urgent certified copy of this order be granted on proper application.

