

IN THE HIGH COURT OF ORISSA AT CUTTACK
BLAPL No.5445 of 2021

Nabin Rout

....

Petitioner

Mr. Sabyasachi Mishra, Advocate

Versus

State of Odisha

....

Opp. Party

Mr. P.K.Mohanty, ASC

CORAM:

JUSTICE SAVITRI RATHO

ORDER

21.02.2022

Order No.

05.

This matter is taken up through hybrid mode.

Heard Mr.Sabyasachi Mishra, learned counsel for the petitioner and Mr. P.K.Mohanty, learned Addl. Standing Counsel.

This is an application under Section 439 of Cr.P.C. for grant of bail to the petitioner-Nabin Rout in connection with Jeypore Town P.S. Case No.109 of 2021 corresponding to T.R. Case No.31 of 2021 pending in the Court of learned District & Sessions Judge-cum-Special Judge, Koraput-Jeypore where charge sheet has been submitted for commission of offences punishable under Section 22 (b) of NDPS Act read with Section 18 (C) and 27 (b) (ii) of Drugs and Cosmetics Act, 1940.

The bail application of the petitioner has been rejected on 07.07.2021 by the learned Special Judge, Koraput-Jeypore in T.R. No.31 of 2021.

The prosecution allegation in brief is that on 30.04.2021 at 11.35 P.M., the S.I., namely, B.Ch. Behera of Jeypore Town P.S. reported regarding seizure of one Nokia keypad mobile (IMEI No.35448799394851 and 355822092394848) and cash of Rs.350/-

from accused Ram Harijan, cash of Rs.1400 from the petitioner-Nabin Rout, one Appol mobile having No.7008934166 and IMEI No.869066042291139 and 869066042291121 and cash of Rs.8,900/- from the co-accused, Dillip Kumar Hantal and one Realme mobile having No.7008382001 (IMEI No.8691330043397297 and 889133043397289, one money purse having cash of Rs.41,000/- one HDFC ATM card having No.6521660238273948 from the co-accused, Sushanta Mahanty. The S.I. also seized 790 ampoules of Pentazocine injection (23.7 grams) and one Maruti Car Wagon R bearing Registration No.OD-10L-1297 from the joint and exclusive possession of above noted accused persons.

Mr. Mishra, learned counsel for the petitioner submits that although F.I.R. had been registered in this case for commission of offence punishable under Section 21 (b) of NDPS Act read with Section 18 (C) and 27 (b) (ii) of Drugs and Cosmetics Act, 1940 against the petitioner and two others, charge sheet has also been filed under Section 22 (b) of the NDPS Act and 18 (C) and 27 (b) (ii) of the Drugs and Cosmetics Act, 1940. The learned counsel draws my attention to Serial No.175 of the table appended to S.O. No.1055 (E) dated 19.10.2001 (which pertains to Pentazocine and small quantity has been indicated to be 20 gm and commercial quantity is 500 gm) and submits that since the quantity of Pentazocine in question does not come under commercial quantity, Section 37 of the N.D.P.S. Act will not be a bar for consideration the prayer for bail to the petitioner. He further submits that the petitioner has no criminal antecedents and he is in custody since 30.4.2021. He also submits that charge sheet has been filed and charge has been framed without receipt of the chemical examination report of the seized substance.

Mr. P.K.Mohanty, learned Addl. Standing counsel opposes the prayer for bail stating that merely because the provision under Section 37 of the NDPS Act will not attracted, prayer for bail of the petitioner should not be allowed as 23.7 gm of Pentazocine which is Schedule-‘H’ drug and used as a narcotic and dangerous for human use without a prescription has been recovered while being transported by the petitioner and other co-accused persons without supporting documents.

Considering the submissions of learned counsel and the quantity of Pentazocine alleged to have been seized from the petitioner and other co-accused persons and the decisions of the Apex Court in the case of *Hira Singh v. State of Himachal Pradesh* reported in *AIR 2020 SC 3255:2020 SCC Online SC 382*, I am not inclined to grant bail to the petitioner at this stage.

Hence, the prayer for bail is rejected.

It is open for the petitioner to move for bail afresh after receipt of the chemical examination report or if there is undue delay in completion of trial.

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

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(Savitri Ratho)
Judge

Bichi