

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 6360 of 2022

***Nishikant Mandal @ Budhi
Bangali***

....

Petitioner

Mr. A.K. Jena, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. M. Mishra, ASC

CORAM: JUSTICE V. NARASINGH

**ORDER
12.12.2022**

Order No.

05.

1. Heard learned counsel for the petitioner and learned counsel for the State.

2. The petitioner is an accused in C.T. Case No.156 of 2011, pending before the Court of the learned Sessions Judge-cum-Special Judge, Koraput-Jeypore, arising out of Jeypore Sadar P.S. Case No.99 (2) of 2011, for commission of alleged offences under Sections 20(b)(ii)(C)/25/29 of NDPS Act.

3. Being aggrieved by the rejection of his application for bail U/s.439 Cr.P.C. by the learned Special Judge, Koraput-Jeypore, by order dated 27.06.2022 in the aforementioned case, the present BLAPL has been filed.

4. It is submitted that the occurrence in question allegedly took place on 05.08.2011 and a vehicle containing contraband Ganja of more than the commercial quantity was found in an abandoned stage in a jungle near village Padampur and the petitioner was charge-sheeted as an absconder in connection with the case at hand on 05.05.2015.

5. It is submitted that the co-accused Sukesh Dhali, who is the owner of the vehicle in question was directed to be released on bail by order dated 08.02.2021 in BLAPL No.2348 of 2020 and hence inter alia on the ground of parity, the petitioner seeks release and on instruction, it is stated that the petitioner has no criminal antecedents and there is no chance of his fleeing justice.

6. Learned counsel for the State opposed the prayer and states that in view of the bar contained under Section 37 of the NDPS Act, question of parity as claimed is misconceived and he relies on the statement of charge-sheeted witness No.26 and submits that there are materials on record that the present petitioner was on a regular basis working as a helper in the vehicle in question. Hence, it is stated that as he is in conscious exclusive possession of the contraband, he ought not to be released on bail.

7. It is the further submission of the learned counsel for the State that the petitioner approached this Court by filing ABLAPL No.3827 of 2020, which was disposed of directing the petitioner to surrender within three weeks. Yet, he did not surrender and absconded and was taken into custody on the basis of coercive measures. Hence, referring to such background facts, learned counsel for the State submits that the conduct of the petitioner does not inspire confidence. Hence, on this sole account, he ought not to be released on bail.

8. This Court perused the statement of charge-sheeted witness adverted to hereinabove. From the tenor of the same, it can be seen that there is no material on record to connect the petitioner with the alleged seizure of contraband on the day of occurrence.

9. Taking into account the release of the co-accused and materials on record which do not prima facie point to the guilt of

accused, this Court directs the petitioner to be released on bail on such terms to be fixed by the learned Court in seisin.

10. Taking into account the conduct of the petitioner that he did not surrender within the time fixed by this Court, it is additionally directed that he shall appear before the jurisdictional police station once every week till conclusion of trial.

11. Learned counsel for the petitioner is not in a position to apprise this Court regarding the criminal antecedent of the petitioner. If it comes to the fore that the petitioner **has any criminal antecedent**, this order shall stand recalled.

12. Accordingly, the BLAPL stands disposed of.

13. Urgent certified copy of this order be granted as per rules.

(V. NARASINGH)
Judge

Ayesha

