

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.5550 of 2021

Krushna Khilla

.... ***Petitioner***
M/s.S.K.Rout, Advocate

-versus-

State of Orissa

.... ***Opp. Party***
M/s.S.K.Mishra, A.S.C.

CORAM:

JUSTICE G. SATAPATHY

ORDER

20.09.2022

Order No.

- 05.
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 Machhakund P.S. Case No.18 of 2021 corresponding to T.R. Case No.25 of 2021 pending in the Court of learned Addl. District & Sessions Judge -cum-Special Judge, Koraput for commission of offence punishable U/Ss. 20(b)(ii)(C) and 29 of NDPS Act on the allegation of transporting contraband Ganja weighing about 135Kg. and 900 grams in an Auto Rikshaw.
 3. In the course of hearing of the bail application, learned counsel for the petitioner submits that the petitioner is a young boy of 19 years of age and he has no past criminal antecedent. It is also submitted that the petitioner is inside the jail custody since 18.02.2021 and he has no knowledge about the goods being carried out in the Auto Rikshaw on the instruction of the owner of the vehicle and therefore, the petitioner's case for bail may be considered leniently. Learned counsel for the petitioner under these submissions prays to enlarge the petitioner on bail.
 4. On contrary, learned counsel for the State, while opposing the bail application of the petitioner submits that the petitioner was in conscious possession of 135Kg. and 900 grams of contraband Ganja in an Auto Rikshaw and Section 37 of the N.D.P.S. Act is a bar for release of such

person dealing with commercial quantity of contraband Ganja. It is, accordingly, prayed by learned counsel for the State to reject the bail application of the petitioner.

5. Gone through the allegations on record upon hearing the parties, there appears allegation against the petitioner for transporting contraband Ganja to the tune of 135Kg. and 900 grams in an Auto Rikshaw bearing Regd. No. OD-10-L-2939 and he was allegedly driving the said Auto Rikshaw at the time of detection. Recovery and seizure of Ganja to the tune of 135Kg. and 900 grams which is coming under the commercial quantity under the N.D.P.S. Act has been alleged from the Auto Rikshaw being driven by the petitioner and Section 37 of the N.D.P.S. Act operates as a bar for release of person accused for offence involving commercial quantity unless the twin condition as enumerated therein are satisfied.

6. In view of above facts and considering the nature and gravity of offence and taking into consideration the seizure of an Auto Rikshaw carrying the contraband Ganja to the tune of 135Kg. and 900 grams which was allegedly driven by the petitioner at the time of detection and keeping in view the embargo as provided under Section 37 of the N.D.P.S. Act for release of person accused of offences involving commercial quantity of contraband articles and taking into consideration the observation of the Apex Court in the *State of Kerala Vrs. Rajesh and another; (2020)78 OCR (SC) 65*, this Court is not inclined to grant bail to the petitioner. Accordingly, the prayer for bail of the petitioner stands rejected.

7. At this point, learned counsel for the petitioner submits for expeditious disposal of the case. In view of such submission, the learned trial Court is requested to dispose of the case as expeditiously as possible.

8. Accordingly, the BLAPL stands disposed of.

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

