

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 5605 OF 2021

Biswamitra Behera

..... Petitioner
Mr. Amulya Ratna Panda, Adv.

-versus-

State of Odisha

..... Opposite Party
Miss S. Mishra, ASC

CORAM:
JUSTICE V. NARASINGH

ORDER
19.04.2022

Order No.

03.

1. This matter is taken up through Hybrid Mode.
2. The petitioner is an accused in connection with Spl. G.R. Case No. 76 of 2021 on the file of the Learned Sessions Judge-Cum- Special Judge, Nayagarh, arising out of Daspalla P.S. Case No. 91 of 2021, for commission of alleged offence under Sections-20(b)(ii)(C)/29 of N.D.P.C., Act.
3. Being aggrieved by the order dtd. 07.07.2021 passed by the Learned Sessions Judge-Cum- Special Judge, Nayagarh in Spl. G.R. Case No. 76 of 2021, rejecting the bail application of the petitioner, the present BLAPL has been filed.
4. Heard Mr. A.R. Panda, learned counsel for the petitioner and Miss S. Mishra, learned Additional Standing Counsel for the State.

5. Learned counsel for the petitioner submits that, there is no material on record to arrive at prima facie finding that the petitioner was in conscious and exclusive possession of the contraband. Hence, according to the learned counsel for the petitioner the bar under Section 37 of the NDPS Act won't come into play in the case at hand. It is also stated that the basis of implication is on the basis of the co-accused statement.

6. Learned Counsel for the petitioner places reliance on the orders passed by this Court dtd.24.11.2021 in BLAPL No. 5700 of 2021 (Biju Sahani) and the order dtd. 21.12.2021 in BLAPL No. 5664 of 2021 (Saroj Kumar Behera) and seeks intervention of this Court inter alia on the ground of parity.

7. Learned counsel for the State opposes the move for bail while not questioning the assertion of the petitioner that he is similarly circumstanced with the other co-accused whose bail was favourably considered by this Court.

8. Taking into account that the accused persons similarly placed have already been released on bail and in the absence of any criminal antecedents and in view of the law laid down by the Apex Court in the Case of *Tofan Singh Vs. State of Tamilnadu* reported in (2020) 80 OCR (SC)-641, this Court directs the petitioner shall be released on bail, on such terms to be fixed by the learned Court in seisin over the matter.

9. The Bail Application thus stands disposed of.
10. Urgent certified copy of this order be granted as per rule.

Balaram

*(V.Narasingh)
Judge*

