

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1917 of 2022

Ajay Kumar Mohanty@ Ajaya
Mohanty

....

Petitioner

Mr. Dillip Ku.Mohanty, Advocate

-Versus-

State of Odisha

....

Opposite Party
Mr.P.K.Rout, AGA

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
22.09.2022

Order No.

- 01.
1. Heard learned counsel for the petitioner and learned counsel for the State.
 2. Instant petition under Section 482 of Cr.P.C. is filed by the petitioner challenging the correctness and illegality of the order of cognizance dated 20th June, 2022 passed in G.R. Case No. 365 of 2022 by the learned court of SDJM, Khurda on the grounds stated therein.
 3. Perused the copy of the F.I.R. which is at Annexure-2.
 4. Learned counsel for the petitioner submits that there is no direct evidence to show the involvement of the petitioner for an offence punishable under Section 25 of the Arms Act for which he has been charge sheeted by the local police which is again based on the confessional statement of an accused from whom a pistol was recovered and seized. It is further submitted that the learned court

below has committed serious illegality by not taking cognizance of the fact that along with the charge sheet, the I.O. did not submit sanction which is required for the offence under Section 25 of the Arms Act rather deferred the case and took cognizance of the said offence only after sanction was produced before him, an approach which has been deprecated the Apex Court in number of decisions. It is contended that the learned court below could not have directed the I.O. to obtain sanction so as to enable him to take cognizance for the offence under Section 25 of the Arms Act which is outrightly an act of illegality and therefore, the order of cognizance in respect thereof by order dated 20th June, 2022 is bad in law and liable to be quashed. It is further submitted that the learned court below also issued a NBWA when the offence is bailable in nature.

5. Mr. Rout, learned AGA for the State on the other hand submits that considering the F.I.R. under Annexure-3 and the materials collected by the I.O., a prima facie case is made out against the petitioner, since a pistol was recovered from the spot may be from another accused who in fact revealed the source to be the petitioner and therefore, the learned court below did not commit any error by taking cognizance vide the impugned order under Annexure-1.

6. In so far as the conduct of the learned court below with regard to the sanction is concerned, it is not revealed from the impugned order dated 20th June, 2022 that in fact any such specific direction was there for the I.O. to obtain the sanction. Of course, on the date of receipt of the charge sheet, the court below did not take cognizance of the offence under Section 25 of Arms Act and the case was adjourned to a subsequent date i.e. 20th June, 2022, the Court is of the view that in such circumstances, it cannot be said that any illegality was committed in that respect. As regards the contention of

the learned counsel for the petitioner that the offence to be punishable under Section 25 of the Arms Act is bailable in nature and therefore, the learned court below could not have issued NBWA, the Court finds that the said offence is punishable with imprisonment for not less than two years and which may extend to five years. In such view of the 2nd schedule of the Cr.P.C. it becomes an offence which is non-bailable in nature and therefore, the learned court below appears to have rightly issued the NBWA and that too when the petitioner was shown as an absconder in the charge sheet. In any view of the matter, the Court does not find any error or illegality committed by the learned court below by taking cognizance of the offence under Section 25 of the Arms Act and rightly passed the impugned order under Annexure-1. However, learned counsel for the petitioner submits that there is no recovery and seizure of the pistol from the petitioner rather he has been implicated on the strength of a confessional statement of other co-accused persons and therefore, appropriate order may be passed for a direction to his surrender before the learned court below and to go on bail with any conditions morefully when the petitioner does not have any criminal antecedent. In view of the above, the Court is of the opinion that though the petitioner could not make out a case for interference in so far as the order of cognizance under Annexure-1 is concerned, but since recovery and seizure of pistol was not made from him but from another case, he should be directed to surrender before the learned court below and go on bail on such terms and conditions.

7. Accordingly, it is ordered.

8. In the result, the CRLMC stands dismissed with a direction to the petitioner to surrender before the court of learned SDJM, Khurda on or before 30th September, 2022 in connection with G.R. Case No. 365 of 2022 and in the event of his surrender, the learned court

below shall release him on bail subject to conditions and on confirmation that he does not have any criminal track record.

9. An urgent certified copy of this order be issued as per rules

(R.K. Pattanaik)
Judge

kabita

