

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 6821 of 2022

Nandkishor Patel & Others

....

Petitioners

Mr. B.K. Ragada, Advocate

-versus-

State of Orissa

....

Opposite Party

Mr. K.K. Gaya, ASC

CORAM: JUSTICE V. NARASINGH

ORDER

05.12.2022

Order No.

06.

1. Heard learned counsel for the petitioners and learned counsel for the State.
2. The petitioners are accused in connection with 2(a)CC Case No.11 of 2022, pending in the Court of the learned Special Judge, Jharsuguda, arising out of Jharsuguda P.R. No.43 of 2022-23, for alleged commission of offences under Section 20(b)(ii)(C) of NDPS Act.
3. Being aggrieved by the rejection of their application for bail U/s.439 Cr.P.C. by the learned Special Judge, Jharsuguda, by order dated 11.07.2022 in the aforementioned case, the present BLAPL has been filed.
4. It is submitted by the learned counsel that the petitioners are in custody since 04.06.2022 and final P.R. has been submitted on 28.08.2022.

5. Relying on the final P.R., it is submitted by the learned counsel for the petitioners that though individual seizures are less than the commercial quantity inasmuch as Ganja to the tune of 15Kgs 500gms, 10Kgs 500gms and 15Kgs respectively, were seized from the petitioners, but the same has been collectively shown so as to attract the bar under Section 37 of the NDPS Act.

6. It is submitted that each of the petitioner could only be liable for the conscious exclusive possession of the contraband seized from him and since final P.R. has been submitted, the petitioners may be released on bail as bar under Section 37 of the NDPS Act is ex facie not attracted in the factual matrix of the case at hand.

7. Learned counsel for the State opposes the prayer for bail and submits that at this stage, it is not open to the accused-petitioners to argue that there has been individual seizure and since the total seizure is 41Kgs of Ganja, which is more than the commercial quantity, the bar enacted under Section 37 of the NDPS Act is squarely applicable and more so when the petitioners are outsiders, their presence cannot be ensured during the ongoing trial. Hence, seeks rejection.

8. On perusal of the final P.R., it is seen that prima facie the submission of the learned counsel for the petitioners merits consideration regarding individual seizure.

9. Taking into account the same, this Court directs the petitioners to be released on bail.

10. Keeping in view that the petitioners do not reside within the territorial jurisdiction, the learned Court in seisin over the

matter to fix the terms so as to ensure their presence on each date of trial.

11. Additionally, it is directed that one of the family members of the petitioners shall execute personal bond in addition to sureties as deemed just and proper by the Court in seisin.

12. While releasing the petitioners on bail, the learned Court in seisin over the matter shall verify assertion regarding criminal antecedents of similar nature. If it comes to the fore that the petitioners have such criminal antecedent, this order shall stand recalled.

13. Accordingly, the BLAPL stands disposed of.

14. Urgent certified copy of this order be granted as per rule.

(V. NARASINGH)
Judge

Ayesha

