

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.6892 of 2022

Madhab Muthai @ Ajay

....

Petitioner

Mr. S.K. Nayak, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. K.K. Gaya, ASC

CORAM: JUSTICE V. NARASINGH

ORDER

31.10.2022

Order No.

03.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the Petitioner and learned counsel for the State.
3. The Petitioner is an accused in connection with T.R. No.94 of 2021 arising out of Jeypur Sadar P.S. Case No.276 of 2021, pending on the file of the learned Sessions Judge-cum-Special Judge, Koraput, Jeypore for the alleged commission of offence under Sections 20(b)(ii)(C) of the N.D.P.S Act.
4. 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 dtd.26.10.2021, the present BLAPL has been filed.
5. Learned counsel for the Petitioner submits that even if the entire allegation of the prosecution is accepted at its face value, the Petitioner has been arrayed as an accused on the basis of the statement of the driver of TATA Indigo ECS Car in which the

contraband was being carried. It is also submitted, relying on the statement of witness Purna Pangi, that the person who escaped from the vehicle is not the Petitioner. Hence, it is stated that this is a case of mistaken identity.

6. Learned counsel for the State opposes the prayer for bail, inter alia, relying on the bar contained in Section 37 of the NDPS Act. It is further submitted that the ground advanced by the Petitioner relating to mistaken identity is farfetched inasmuch as his father's name has been correctly stated in the statement of witness Purna Pangi on which learned counsel for the Petitioner relies.

7. Keeping in view that the allegation primarily is on account of the statement of co-accused and taking into account the law laid down by this Court in the case of **Tofan Singh vrs. State of Tamil Nadu**, reported in **(2020) 80 OCR (SC) 641** and that the Petitioner is a first offender, as stated, this Court directs the Petitioner to be released on bail on such terms to be fixed by the learned court in seisin over the matter.

8. Learned Court in seisin over the matter shall verify the criminal antecedents. If it comes to the fore that the Petitioner has any criminal antecedent, this order shall stand recalled.

9. The BLAPL thus stands disposed of.

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

(V. NARASINGH)
Judge

PKS