

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 6914 of 2022

Simanchal Behera

....

Petitioner

Mr. R.L. Pattnaik, Advocate

-versus-

State of Orissa

....

Opposite Party

Mr. P.K. Maharaj, ASC

CORAM: JUSTICE V. NARASINGH

ORDER
16.09.2022

Order No.

01.

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 accused in Orkel P.S. Case No.234 of 2020 dtd.31.12.2020 corresponding to T.R. Case No.183 of 2020, pending in the file of learned Session Judge-cum-Special Judge, Malkangiri, for alleged commission of offences under Section 20(b)(ii)(C) of NDPS Act.
4. Being aggrieved by the Rejection of his application for bail U/s.439 Cr.P.C. by the learned Session Judge, Malkangiri, by order dated 27.05.2022 in the aforementioned case, the present BLAPL has been filed.
5. It is submitted by the learned counsel for the petitioner that though the petitioner is in custody since 31.12.2020, since there is no progress in trial, his bail application be reconsidered in view of the law laid down relying on the judgment of the Apex Court in the

in case of *Hussainara Khatoon & Others Vrs. State of Bihar*, reported in (1980) 1 SCC 81.

6. It is further submitted that though the wife who was the co-accused was released on bail by order of this Court dated 18.04.2022, she is finding it difficult to take care of their children aged about 5 and 9 years.

7. Learned counsel for the State opposes the move for bail, inter alia on the ground that in view of Bar under Section 37 of NDPS Act, petitioner's case is not entitled to be considered in terms of the proviso under Section 437(1).

8. Taking into account that charge-sheet has already been filed in the meanwhile, which is on record on 26.06.2021 and the plight of the children of the petitioner as submitted by the learned counsel for the petitioner, this Court keeping in view the law laid down in the case of *Hussainara Khatoon (Supra)*, directs the petitioner to be released on bail, learned Court to fix the terms to ensure the presence of the petitioner on each date of trial.

9. Accordingly, the BLAPL stands disposed of.

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

(V. NARASINGH)
Judge

Ayesha