

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.9005 of 2022

Biraj Barik

....

Petitioner

Mr. Rakesh Kumar Das, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. Sitikant Mishra, A.S.C.

**CORAM:
JUSTICE A.K.MOHAPATRA**

**ORDER
03.08.2022**

Order No.

01. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner and learned Addl. Standing Counsel for the State.
3. This is an application under Section 438, Cr.P.C. filed by the Petitioner for anticipatory bail, involving offence punishable under Sections 20(b)(ii)(c) and 29 of the N.D.P.S. Act.
4. Learned counsel for the Petitioner submits that the co-accused persons similarly situated to the present Petitioner have already been released on bail.
5. Taking into consideration the nature of offence and non-availability of the Case Diary, I am not inclined to exercise my discretion under Section 438, Cr.P.C. in favour of the Petitioner.
6. However, it is observed that, the Petitioner, if so advised, may surrender before the learned A.D.J.-cum-Special Judge,

Gunupur, Rayagada in T.R. Case No.02 of 2021 corresponding to STF P.S. Case No.01 of 2021 within a period of three weeks from today. In the event the Petitioner surrenders and moves for bail within the aforesaid stipulated period, learned A.D.J.-cum-Special Judge, Gunupur, Rayagada shall do well to dispose of the bail application of the Petitioner on the same day on merit in accordance with law and further keeping in view the fact that the Petitioner was not present at the spot from where the seizure was made. Further, while considering the bail application of the Petitioner, the learned court in seisin over the matter shall also consider the law laid down by the Hon'ble Supreme Court of India in *Tofan Singh vs. State of Tamilnadu* : reported in (2021) 4 SCC 1 and order dated 10.01.2022 in the matter of *State by (NCB) Bengaluru Vs. Pallulabid Ahmad Arimuta and another (Special Leave to Appeal (Criminal) No.242 of 2022)*. The Case Diary be made available to the concerned court in order to facilitate in disposal of the bail application of the petitioner on the same day. Ground of parity, if canvassed by the learned counsel for the Petitioner, shall also be taken into consideration by the A.D.J.-cum-Special Judge, Gunupur, Rayagada while considering the bail application of the Petitioner.

7. The ABLAPL is disposed of accordingly.
8. Urgent certified copy of this order be granted as per rules.

(A.K. Mohapatra)
Judge