

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.7204 of 2022

Gila @ Alok Das

....

Petitioner

*Mr. Millan Kanungo, Sr.
Advocate*

-Versus -

State of Odisha

....

Opposite Party

*Mr. M. Mishra,
Additional Standing Counsel*

CORAM:

JUSTICE SASHIKANTA MISHRA

**ORDER
22.09.2022**

**Order No.
2.**

1. This matter is taken up through hybrid mode.
2. This is the second journey of the petitioner to this Court after rejection of earlier application on 11.07.2022 passed in BLAPL No. 5698 of 2022. The present application has been filed on the ground that certain points of law having a material bearing on the case could not be placed before the Court at the relevant time.
3. Heard learned counsel for the petitioner and learned Additional Standing Counsel for the State.
4. The petitioner is in custody since 15.12.2021 in connection with Jagatsinghpur P.S. Case No. 684 of 2021 corresponding to C.T. Case No. 245 of 2021 pending in the court of learned Addl. Sessions Judge-cum-Special Judge, Jagatsinghpur for the alleged commission of offence under Sections 21 (C)/29 of NDPS Act.
5. It is alleged that the petitioner was possessing contraband brown sugar weighing 262 grams when he was apprehended by

police.

6. Mr. Millan Kanungo, learned Senior Counsel has argued that the charge sheet has been submitted without chemical examination report for which it is prima facie not possible to hold that the seized substance was indeed brown sugar. According to Mr. Kanungo unless this basic element is brought on record, the entire exercise by the prosecution is rendered a nullity.

7. Mr. Kanungo has relied upon the decisions of Bombay High Court in the case of *Sunil Vasantrao Phulbande and others vs. State of Maharashtra*, reported in 2002 SCC OnLine Bom 153 and of Andhra Pradesh High Court in *Matchumari China Venkatareddy and others vs. State of Andhra Pradesh*, reported in 1994 CriLJ 257. After going through the judgments, this Court finds considerable force in the submission made by Mr. Kanungo.

8. Mr. M. Mishra, learned Additional Standing Counsel for the State has opposed the prayer for bail by submitting that there may be delay in submission of chemical examination report but for such reason, the petitioner should not be shown any leniency. It is further submitted that charge sheet has been submitted keeping investigation open under Section 173(8) of Cr.PC.

9. After considering the rival submission as also on going through the judgments cited by Mr. Kanungo, I find considerable force in the contentions raised that unless the charge sheet is accompanied by the chemical examination report, it would not be possible to conclusively hold that the seized substance was brown sugar.

10. Taking into consideration all the above facts as also the

period of detention of the petitioner in custody, I am inclined to allow the prayer for bail. Let the petitioner be released on bail on such terms and conditions as the court in seisin over the matter may deem fit and proper to impose including the following conditions:-

(i) He shall furnish cash security of Rs. 25,000/-Rupees Twenty Five thousand) in the shape of short term fixed deposit in any Nationalized Bank being pledged to the court below.

(ii) He shall personally appear before the trial Court on each date of posting before the Court without fail.

11. Urgent certified copy of this order be granted on proper application.

(Sashikanta Mishra)
Judge

