

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.6240 of 2021

Kalandi Swain

....

Petitioner

Mr.Partha Sarathi Nayak, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. M.K.Mohanty, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

16.03.2022

Order No.

05.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard Mr.Partha Sarathi Nayak, learned counsel for the Petitioner as well as Mr.M.K.Mohanty, learned Additional Standing Counsel for the State.
3. This is an application under Section 439 of the Criminal Procedure Code filed by the Petitioner to release him on regular bail in connection with C.T.Case No.41 of 2021 pending in the Court of the learned Special Judge-cum-Additional District & Sessions Judge, Baliguda, corresponding to Baliguda P.S.Case No.122 of 2021 for commission of the alleged offences under Sections 20(b)(ii)(C)/25/29 of the N.D.P.S.Act.
4. The prosecution case in a nutshell is that on 22.07.2021 on getting information that huge quantity of ganja was transported and to verify the veracity of the information, a raiding party proceeded to the spot and after reaching at the spot the raiding party waited for the culprits. At about 12.45 P.M. two vehicles were seen coming from Sudra side. A motorcycle was escorting the auto rickshaw. The raiding

party could able to catch the vehicle in which four persons were sitting and they confessed that they were transporting ganja in the auto. They could not produce any license or documents in support of the ganja. On search of the auto one large plastic jerry bag was found which on weighment found containing 43 kg. 300 grams of ganja. The contraband ganja was seized and the accused persons were arrested.

5. Learned counsel for the Petitioner submits that the Petitioner is in custody since 22.07.2021. He further submits that the investigation has been concluded and the Police has submitted charge sheet in the case. The case of the Petitioner is that the present Petitioner was escorting the auto rickshaw on which the ganja was kept. It has been specifically mentioned in the notice under Section 50(1) of N.D.P.S. Act that the Petitioner was escorting the vehicle. He further submits that since the contraband ganja in question has not been seized from his conscious and exclusive possession, bar under section 37 of the N.D.P.S. Act is not attracted to the fact of the present case. Further, it is submitted by the learned counsel for the Petitioner that the Petitioner does not have any criminal antecedents of similar nature and that the Petitioner is a permanent resident of the locality. Therefore, in the event of his release on bail, there is no chance of his fleeing away from the hands of justice.

6. On the other hand, learned counsel appearing for the State opposes the prayer for bail of the Petitioner on the ground that case of illegal trafficking of contraband ganja is increasing rapidly in the State of Odisha. Further, in the event the Petitioner will be released on bail, he may not cooperate with the trial and the trial will be unnecessarily protracted. Accordingly, he submits that no leniency should be shown to the persons involving in such type of offence and prays for rejection of the bail application of the Petitioner.

7. Having heard learned counsel for the parties and considering

surrounding circumstances as well as the custodial detention of the Petitioner, this Court is inclined to release the Petitioner on bail subject to stringent conditions. Let the Petitioner be released on bail subject to furnishing bail bond of Rs.50,000/- (Rupees Fifty thousand) with two local solvent sureties each for the like amount to the satisfaction of the learned court in seisin over the matter subject to the following terms and conditions :

- i) he shall not indulge in similar nature of offence.
- ii) shall appear before the trial court on each and every date and shall cooperate for early conclusion of trial.
- iii) shall not tamper with the prosecution evidence and shall not make any attempt to influence or threaten the witnesses.
- iv) shall provide his address as well as his phone number to the concerned Police Station and keep the same updated in the event the same is changed in future.
- v) shall appear before the concerned Police Station once in a week preferably on Sunday between 10 to 1 P.M. till conclusion of trial.
- vi) Violation of any of the terms and conditions shall entail cancellation of bail.

10. It is further directed that the bail granted to the Petitioner is subject to the condition that learned court below shall verify whether the Petitioner has any criminal antecedents of similar nature. In the event it is found that the Petitioner has any criminal antecedents of similar nature, this bail order shall automatically stand revoked.

11. With the aforesaid observation the BLAPL stands disposed of.

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

