

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 7241 of 2022

Hadi Challan

....

Petitioner

Mr. A.K. Sahoo, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. Karunakar Gaya, ASC

CORAM: JUSTICE V. NARASINGH

ORDER
29.11.2022

Order No.

02.

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 Special G.R. Case No.67 of 2021, pending on the file of learned Sessions Judge-cum-Special Judge, Malkangiri, arising out of Muduliada P.S. Case No.54 of 2021, for commission of alleged offences under Section 21(b)/25/29 of NDPS Act.
4. Being aggrieved by the rejection of his application for bail U/s.439 Cr.P.C. by the learned Sessions Judge-cum-Special Judge, Malkangiri by order dated 04.03.2022 in the aforementioned case, the present BLAPL has been filed.
5. It is submitted by the learned counsel that the petitioner is in custody since 21.09.2021 and as charge sheet has been filed on

17.01.2022, further continuance of the petitioner in custody is not warranted.

6. Learned counsel for the petitioner submits that the basis of implication is on account of the statement of the co-accused Dhobu Pangi, who was nabbed at the spot and the said Dhobu Pangi had named two person, present petitioner the driver of the Bolero Pick up vehicle and one Managala Batri who was the rider of the motor cycle who has since been released on bail by this Court by order dated 29.09.2022 in BLAPL No.3278 of 2022.

7. Learned counsel for the petitioner also relies on the order of this Court dated 18.05.2022 in BLAPL No.3028 of 2022 relating to the co-accused Dhiru @ Dhiren Chhualasingh who was owner of the Bolero vehicle from which contraband (ganja) to the tune of 720 kgs was seized. It is the further submission of the learned counsel for the petitioner that inter alia on the ground of parity, he may be released on bail.

8. Learned counsel for the State opposes the prayer for bail on the basis of recitals in the order of rejection.

9. It is submitted by the learned counsel for the State that the co-accused Dhiru @ Dhiren Chhualasingh was directed to be released on bail by this Court, since admittedly he was not present at the spot and he was implicated because he was the owner of the Bolero vehicle from which the contraband was seized. The accusations so far as Managala Batri is concerned, it is stated that he was riding a bike and was escorting the Bolero vehicle and it is submitted that the petitioner is stated to be the driver of Bolero Pick Up van from which the contraband was seized. Therefore, he ought

not to be released on bail in view of the bar under Section 37 of the NDPS Act.

10. Taking into account that the implication of the petitioner is on account of co-accused statement and keeping in view the dictum of apex Court in the case of *Tofan Singh vs. State of Tamil Nadu*, reported in *(2020) 80 OCR 641* and release of the co-accused, though not similarly circumstanced, as rightly pointed out by the learned public prosecutor, 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.

11. While enlarging the petitioner on bail the learned court below shall verify assertion regarding criminal antecedent of the petitioner. If it comes to the fore that the petitioner has criminal antecedent of similar nature, this order shall stand recalled without any further reference to this Court.

12. Accordingly, the BLAPL stands disposed of.

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

(V. NARASINGH)
Judge