

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 7288 of 2022

***Rabindra Dalai @ Rabindra
Kumar Dalai @ Tuba***

Petitioner

Mr. S.K. Samantaraya, Advocate

-versus-

State of Odisha

Opposite Party

Mr. P.K. Maharaj, 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 G.R. Case No.30 of 2021(N), pending on the file of learned Additional Sessions Judge-cum-Special Judge, Khallikote, arising out of Kodala P.S. Case No.595 of 2021, for commission of alleged offences under Section 20(b)(ii)(C) of NDPS Act and is in custody since 06.04.2022.
4. Being aggrieved by the rejection of his application for bail U/s.439 Cr.P.C. by the learned Additional Sessions Judge-cum-Special Judge, Khallikote, Dist- Ganjam by order dated 29.04.2022 in the aforementioned case, the present BLAPL has been filed.
5. Learned counsel for the petitioner on instruction submits that charge sheet has already been filed and petitioner is in custody since 06.04.2022.

6. It is further submitted that the co-accused from whose conscious possession the contraband (ganja) was seized to the tune of 20 kg 800gms seized, has been released on bail.

7. Hence, it is stated that since admittedly the petitioner was named on the basis of the accusation by the co-accused and he has lesser complicity, on the ground of parity, he ought to be released on bail.

8. Learned counsel for the State relying on the order of rejection submits that the petitioner has criminal antecedents and as such he cannot be said to be similarly circumstanced and therefore, he ought not to be released on bail.

9. This Court had occasion to peruse the order of rejection and the FIR on which reliance was placed by the learned counsel for the petitioner which prima facie shows that the petitioner was implicated on the basis of the co-accused statement. Since co-accused person from whom the contraband was seized has already been released on bail, this Court directs the petitioner to be released on bail on such terms to be fixed by learned Court in seisin over the matter.

10. So far as criminal antecedents are concerned, this Court had perused the same and it is seen that the petitioner is not accused of committing similar type of offence though the offence in which he has been involved is grave in nature. Considering the bar contained in Section 37 of the NDPS Act, this Court directs that additionally the Court in seisin shall direct appearance of the petitioner before the jurisdictional police station on such date and time to be fixed by the Court in seisin and while releasing it shall

verify that apart from the antecedent which has been reflected in the order of rejection whether the petitioner has any other antecedent of similar nature. If it comes to the fore that the petitioner has any other criminal antecedent, this order shall stand recalled without any further reference to this Court.

11. Accordingly, the BLAPL stands disposed of.

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

(V. NARASINGH)
Judge



Santoshi