

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.9261 2022

Dulal Bairagi

....

Petitioner

Mr. Alok Kumar Das, Advocate

-versus-

State of Odisha

....

Opp. Party

Mr. Sitikanta Mishra, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

04.08.2022

Order No.

01. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner and the learned Additional Standing Counsel. Perused the records.
3. This is an application under Section 438 Cr.P.C. filed by the Petitioner for anticipatory bail.
4. The Petitioner is seeking pre-arrest bail in connection with G.R.Case No.117 of 2021 , arising out of Adava P.S.Case No. 125 of 2021 pending in the Court of the learned District & Sessions Judge, Gajapati at Paralakhemundi for commission of offence punishable under sections 20(b)(ii) C, 25 and 29 of N.D.P.S.Act.
5. It is submitted by the learned counsel for the Petitioner that the Petitioner is the owner of the vehicle in which contraband articles were transporting and though the vehicle was not transferred in the name of the accused through the concerned R.T.O., but the hand written agreement dated 1709.2021 shows that the accused was in possession of the said vehicle by making a hand written agreement

with the present Petitioner. He also contends that the Petitioner has no criminal antecedent to his credit.

6. Taking into consideration the nature of offence and non-availability of the case diary, I am not inclined to exercise any discretion under Section 438 Cr.P.C. in favour of the Petitioner.

7. However, it is observed that the Petitioner, if so advised, may surrender before the learned District & Sessions Judge, Gajapati at Parlakhemundi in the aforesaid case within three weeks from today. In the event the Petitioner surrenders and moves for bail within the aforesaid period, learned District & Sessions Judge, Gajapati 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 Petitioner was the owner of the vehicle. Further, while considering the bail application of the Petitioner, 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 v. Palluabid Ahmad Arimuta and another (Special Leave to Appeal (Criminal) No.242 of 2022)*. The case diary be made available to the concerned court to facilitate disposal of the bail application of the Petitioner.

8. Accordingly, the ABLAPL stands disposed of.

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

(**A.K. Mohapatra**)
Judge