

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 7384 of 2022

Mayadhara Sethy

....

Petitioner

Mr. S. Panda, Advocate

-versus-

State of Orissa

....

Opposite Party

Mr. K.K. Gaya, ASC

CORAM: JUSTICE V. NARASINGH

ORDER
14.10.2022

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 connection with Special G.R. Case No.31 of 2021, pending in the Court of learned Sessions Judge-cum-Special Judge, Sonapur, arising out of Tarava P.S. Case No.215 of 2021, for offences under Sections 20(b)(ii)(C)/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 Special Judge, Sonapur, by order dated 31.03.2022 in the aforementioned case, the present BLAPL has been filed.
5. Learned counsel for the petitioner submits that the independent witnesses Ranjit Sahu and Anil Kumar Sahu cited as charge-sheeted witnesses 10 & 11 have not identified the petitioner though they belong to the same village.

6. The petitioner also submits that there has been infraction in the procedure of seizure and it is urged with vehemence that the investigation has been conducted in a perfunctory manner inasmuch as even the Investigating Agency has not taken the pain of verifying the call detail record to ensure whether the petitioner was present in the vehicle (ambulance) at the time of occurrence.

7. Per contra, the learned counsel for the State opposes the prayer for bail.

8. This Court had occasion to examine the contention of the petitioner vis-à-vis the stipulation as contained in Section 37 of the NDPS Act which regulates the grant of bail on satisfaction of twin conditions that prima facie the petitioner is not involved and second he is not likely to commit any offence while on bail. Unless both the conditions are satisfied, there is an embargo, which the legislature has envisaged, for grant of bail.

9. In the case at hand from the materials on record, this Court is not persuaded to hold that there is no prima facie case so as to warrant exercise of jurisdiction though because lack of criminal proclivity, as stated by the learned counsel for the petitioner, it can be said that the second condition is prima facie satisfied. The infraction which has been so vehemently pressed into service by the learned counsel for the petitioner cannot be scrutinized at this stage of grant of bail. When prima facie this Court is satisfied regarding the involvement of the petitioner, such scrutiny would amount to prejudging the issue pending trial which is the settled principle of criminal jurisprudence. More particularly, in view of the fetters in exercises of power under Section 37 of the NDPS Act envisaged by the law makers.

10. Considering the special nature of the statute and the limited contours in which the Court is to exercise its jurisdiction as a departure from the normal rule, this Court is **not inclined** that the case at hand merits consideration.

11. Accordingly, the BLAPL stands rejected.

(V. NARASINGH)
Judge

Ayesha

