

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.7470 of 2022

Tukuna Barik

....

Petitioner

Mr. Bigyan Kumar Sharma, Advocate

-versus-

State of Odisha

....

Opp. Party

Mr. P.C. Das, ASC

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

22.12.2022

Order No.

09.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard Sri B.K. Sharma, learned counsel appearing for the Petitioner and Mr. P.C. Das, learned counsel appearing for the State- Opposite Party. Perused the materials placed before this Court.
3. By filing the present bail application, the Petitioner has approached this Court under Section 439 of Cr.P.C. for regular bail second time.
4. The earlier bail application bearing No.7048 of 2021 was not pressed by the counsel for the Petitioner with liberty for a direction to the trial court to conclude the trial within a period of four months, failing which the Petitioner shall file a fresh bail application before the trial court. The previous bail application was thus disposed of vide order dated 4.3.2022.
5. The present bail application under Section 439 of Cr.P.C. has been filed by the Petitioner for regular bail in connection with Special G.R. Case No.08 of 2021, arising out of Badagada P.S. No.61 of 2021, pending in the Court of learned Additional Sessions

Judge-cum-Special Judge, Bhanjanagar for alleged commission of offence punishable under Section 20(b)(ii)(C) of the N.D.P.S. Act, 1985.

6. At the time of admission of the bail application, this Court vide order dated 29.09.2022 called for a report from the Court in seisin over the matter with regard to the status of the trial. The Trial Court vide its letter dated 13.10.2022 submitted a report stating therein that charge was framed on 26.04.2022 against the accused persons and out of fifteen number of charge sheet witnesses, four witnesses have been examined so far.

7. Perused the report as well as the deposition of witnesses submitted before this Court.

8. The factual background of the case, in a nutshell, is that on 09.03.2021 at about 6.00 A.M. in the morning while the informant and other staff were performing patrol duty, they received reliable information regarding illegal transportation of contraband Ganja. Accordingly, the informant detained one Pick-up van bearing Registration No.OD-07Z-4327. On seeing the police signal, the vehicle stopped and on checking of the vehicle, the police personnel found bags were loaded in the vehicle and three persons including the driver and owner were present in the vehicle. On search of the vehicle, the informant found bags containing Ganja weighing 144 Kilo 0.30 Gram of Ganja. Thereafter, other formalities were conducted and the accused persons were forwarded to the Court.

9. Mr. Sharma, learned counsel appearing for the Petitioner, at the outset, submitted that the Petitioner is the driver of the Pick-up van and he was employed by the vehicle owner, namely, Bishnu Prasad Sahu in whose name the vehicle in question was registered.

He further submitted that the Petitioner, who is a poor driver and is the sole bread earner of his family, is in custody since 9.3.2021. The owner of the vehicle is engaged in wholesale business of selling cold drinks and snacks. The job of the Petitioner is only to drive the vehicle and delivery the packet materials as per the direction of the employer/owner. On the date of occurrence, packets/boxes were loaded to the help of labourers and the owner of the vehicle, namely, Bishnu Prasad Sahu was also present in the vehicle. He specifically alleged that the Petitioner had no knowledge about the contraband materials other than the cold drinks and snacks packets which were loaded in the vehicle.

10. Learned counsel for the Petitioner further contended that the Petitioner has no similar criminal antecedent and there is no specific material which would establish the fact that the Petitioner had knowledge about the contraband Ganja being transported in the vehicle which he was driving. Therefore, although he was arrested from the spot and as such named in the F.I.R., but the Petitioner had no knowledge regarding loading of contraband Ganja in packet. It is further contended that as per the usual practice, the labourer employed by the owner loaded cold drinks and packed snacks into the truck thereafter the Petitioner accompanied by the owner proceeded towards the destination. As such, it is argued that there is no material to establish the fact that the Petitioner had any knowledge regarding the presence of loading of contraband Ganja in the truck. He further contended that the Petitioner has been implicated in the present case on the basis of the confessional statement of the co-accused persons.

11. Learned counsel for the Petitioner also argued that the

mandatory provision under the N.D.P.S. Act has also not been complied while conducting the search and seizure and arrested the accused persons, more particularly the provision contained under Section 42 of the N.D.P.S. Act has not been complied with in the present case.

12. Additionally, learned counsel for the Petitioner would argued that the mandatory provision under Section 50 of the N.D.P.S. Act with regard to search and seizure has also not been followed in the present case. Thus, it is submitted that due to non-compliance of Sections 42 and 50 of the N.D.P.S. Act, the entire investigation is vitiated.

13. Learned counsel for the State, on the other hand, submits that upon getting credible information, the police officers, who were on patrolling duty, stopped the vehicle and the Petitioner and others were arrested from the spot. He further contended that on search, contraband articles were found from the truck in question. Therefore, it was argued that the bail application is liable to be rejected on the ground that the Petitioner was arrested from the spot along with contraband articles. He further contended that the case of the illegal transportation of contraband Ganja is on the rise in the State of Odisha now-a-days. Therefore, no leniency should be shown to the Petitioner. He further argued that in view of the bar contained under Section 37 of the N.D.P.S. Act, the bail application of the Petitioner is liable to be rejected.

14. In reply to the argument advanced by the learned Additional Standing Counsel appearing for the State-Opposite Party, Mr. Sharma, learned counsel for the Petitioner submits that the bar under Section 37 of the N.D.P.S. Act would not be attracted to the facts of

the present case inasmuch as there exists no material to establish that the Petitioner had knowledge with regard to loading of contraband Ganja in the truck in question. Further, in view of the evidence collected so far, no interference could be drawn with regard to Petitioner's knowledge regarding presence of contraband Ganja. Therefore, the bar under Section 37 of the N.D.P.S. Act would not be attracted so far the present Petitioner is concerned.

15. Learned counsel for the Petitioner also argued that the Petitioner is in custody for almost 20 months and the trial has not progressed substantially. He also took the ground that since there is inordinate delay in concluding the trial, the Petitioner, who is in custody is unable to support his family financially and as a result of which the family of the Petitioner might die out of starvation. Accordingly, it is submitted that in the event of Petitioner release on bail by this Court, the Petitioner shall abide by any terms and conditions imposed by this Court.

16. Having heard the learned counsel for the parties and upon a careful consideration of the rival contentions and also upon examination of surrounding facts and circumstances, so also taking into consideration the period of detention as well as the irregularities alleged while complying the mandatory provision under Sections 42 and 50 of the N.D.P.S. Act, this Court is of the view that the bar under Section 37 of the N.D.P.S. Act would not be attracted, so far as the present Petitioner is concerned, and further considering the fact that the Petitioner is a local man and there is no chance of absconding, this Court is inclined to release the Petitioner on regular bail.

17. Hence, it is directed that the Petitioner be released on bail in

the aforesaid case on furnishing bail bond of Rs.30,000/-(Rupees thirty thousand) with two local solvent sureties each for the like amount to the satisfaction of the Court in seisin over the matter.

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

19. The release of the Petitioner shall also subject to such terms and conditions as would be fixed by the Court in seisin over the matter which shall be subject to the condition that in the event of violation of such conditions, the bail of the Petitioner shall be cancelled/recalled by the Court in seisin over the matter.

20. With the aforesaid observations and directions, the BLAPL is disposed of.

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

(A.K. Mohapatra)
Judge