

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.6426 of 2021

Sushanta Mandal

.... ***Petitioner***
Mr. M. Padhy, Advocate

-versus-

State of Odisha

.... ***Opposite Party***
Mr. M.K. Mohanty, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

16.02.2022

Order No.

03.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner and learned Additional Standing Counsel for the State. Perused the case diary, F.I.R., charge-sheet and the statement of the witnesses.
3. The present bail application has been field by the Petitioner under Section 439, Cr.P.C to release the Petitioner on bail, who is in custody in connection with Malkangiri P.S. Case No.207 of 2019 corresponding to T.R. Case No.106 of 2019(A), pending in the court of learned Sessions Judge-cum-Special Judge, Malkangiri for commission of offences under Sections 20(b)(ii)(C)/27(A) of the N.D.P.S. Act.
4. The bail application filed by the Petitioner before the learned Sessions Judge-cum-Special Judge, Malkangiri, which was rejected by order dated 21.05.2021.
5. The prosecution case is that the police team of Malkangiri P.S. while they were patrolling duty on the main road of Malkangiri to

Mathili at Satiguda Dam Chowk on 10.09.2019 at about 10.00 P.M. stopped three motorcycles loaded with two number of plastic sacks coming from village MV-111 at a high speed. The driver of the said vehicles tried to escape from the spot leaving behind their motorcycles and plastic sacks taking advantage of dark night. However, the police party chased them and could nab one of them and two others managed to escape in the darkness.

6. Mr. Padhy, learned counsel for the Petitioner submits that the Petitioner has been implicated in this case on the basis of the statement of the co-accused. He further submits that the police has submitted charge-sheet in the case on 07.02.2020 against three accused persons including the present Petitioner. The present Petitioner was produced in court on 11.04.2021 on the strength of N.B.W. of arrest by the court. Learned counsel for the Petitioner further submits that the Petitioner was neither arrested from the spot nor any contraband ganja was seized from the exclusive and conscious possession of the Petitioner. As such, no case under the NDPS is made out against the Petitioner. He further submits that in view of the judgment delivered by the Hon'ble Supreme Court of India in the case of *Tofan Singh vrs. State of Tamilnadu* : reported in *(2021) 4 SCC1* and order dated 10.01.2022 in the matter of *State By (NCB) Bengaluru vrs. Pallulabid Ahmad Arimuta and another (Special Leave to Appeal (Criminal) No.242 of 2022)*. The statement made by the co-accused under Section 67 of the N.D.P.S. Act is not admissible in evidence.

7. In such view of the matter, learned counsel for the Petitioner prays that the Petitioner may be released on bail. Learned counsel for the Petitioner further contended that the procedure has laid down in Sections 42 and 50 of the N.D.P.S. Act have not been followed in the

present case. The Petitioner cannot be held guilty of offence alleged against him.

8. Mr. Mohanty, learned counsel for the State, on the other hand, submits that the Petitioner was riding one of the motorcycles and managed to escape from the spot, as such, he could not be apprehend at the spot. However, basing upon the statement of the co-accused, he was arrested later on. Mr. Mohanty, further submits that a clear case is made out against the Petitioner and the provisions as N.D.P.S. Act. He further submits that the trafficking of contraband substances are on the rise in the Malkangiri district of the State of Odisha. Therefore, no leniency should be shown to the Petitioner.

9. Having heard learned counsel for the parties, considering the period of detention of the Petitioner in custody and the fact that the investigation has been completed and charge-sheet has been filed in the meantime and further the fact that the Petitioner has been apprehended on the basis of the statement made by the co-accused, this Court is inclined to release the Petitioner on bail.

10. Let the Petitioner be released on bail subject to furnishing a bail bond of Rs.50,000/-(Rupees fifty thousand) with a solvent local surety for the like amount to the satisfaction of the court in seisin over the matter. However, this order is subject to the following conditions:-

- I. The Petitioner after releasing on bail shall not indulge in any criminal offence on similar nature;
- II. He shall not tamper with the prosecution evidence and shall not influence/threaten any of the prosecution witnesses in any manner;
- III. He shall appear before the local Police Station once in every fortnight preferably on 'Sunday' in

between 10.00 A.M. to 1.00 P.M. till conclusion of trial; and

- IV. He shall not leave the jurisdiction of the trial court without specific permission of the court and shall appear before the trial court on each and every date the case is posted for trial without fail.

Violation of any of the terms and conditions shall entail cancellation of bail.

11. The Bail Application is accordingly disposed of.

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

Jagabandhu

