

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.6519 of 2021

Amir Yadav

.... ***Petitioner***
Mr. Rajib Rath, Advocate

-versus-

State of Orissa

.... ***Opposite Party***
Mr. K.K. Nayak, A.S.C. for State

**CORAM:
JUSTICE A.K.MOHAPATRA**

ORDER
08.02.2022

Order No.

02. 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. Heard Sri Rajib Rath, learned counsel for the Petitioner and Sri K.K.Nayak, learned, learned ASC for the State. Perused the case diary, copy of the FIR, rejection order etc.
3. This is an application for bail u/s 439 Cr.P.C. in connection with G.R. Case No.89 of 2020 pending in the file of the Special Judge cum Sessions Judge, Gajapati, Parlakhemundi, corresponding to R.Udayagiri P.S. Case No.111 of 2020, based on an FIR dtd.10.12.2020, which was lodged by the Sub-Inspector of Police, Basanta Kumar Guntha for alleged commission of offences u/s 20(b) (ii)(C)/25/29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (*in short 'NDPS Act'*).
4. The prosecution allegation as unfolded from the FIR, in a nut shell, is that the S.I. of Police (informant) upon getting reliable information stopped a Mini MT Van coming with three persons

including the present Petitioner on the Cheligada-Ramagiri Road. After a gap of 10 minutes, the informant also stopped another vehicle i.e. Tata Truck. One Ram Ratan Yadav along with another co accused were in the second vehicle. On search, the informant found 52 packets of contraband Ganja in the chamber of the Tata Truck (2nd Vehicle) and thereafter the seized contraband articles were weighed and it was found that a total 264 Kgs of contraband was being illegally transported in nine jarry bags. Accordingly, all the contraband substances were seized from the 2nd vehicle and a case as stated above was registered.

5. Learned counsel for the petitioner submits that the present petitioner is an innocent person. The Petitioner was travelling in the 1st vehicle as a passenger and he has been falsely arraigned in this case as an accused. While travelling he did not get any passenger vehicle, therefore, he was compelled to take lift in a vehicle bearing State of Odisha registration number, i.e. OR 07N-4977 by paying the fare to the driver of the said vehicle. After the vehicle was detained by the police, the petitioner was arrested on false charges. The Petitioner is languishing in jail in custody since 10.12.2020. It was further submitted by the learned counsel for the petitioner that nothing has been seized either from the conscious possession of the Petitioner or the vehicle in which he was travelling. He further submits that the petitioner has been implicated in this case on the basis of an alleged statement of a co-accused recorded under section 67 of the NDPS Act.

6. After the arrest, the petitioner had moved a bail application before the Special Judge cum Sessions Judge, Gajapati in G.R. Case

No.89 of 2020. The Special Judge vide order dtd.22.01.2021 has rejected the bail application of the petitioner.

7. Sri K.K.Nayak, learned ASC on the other hand submits that the plea taken by the petitioner is completely false and vague. He further submits that the petitioner along with others, were transporting huge quantity of contraband ganja (264 Kgs.). Since the quantity contraband articles involved in the present case is more than the commercial quantity, the bar under section 37 of the NDPS Act applies to the case of the petitioner and as such the petitioner is not entitled to be released on bail by this court. He further expresses his apprehension that in the event the petitioner is released on bail, he may not cooperate with the trial as the petitioner is not a permanent resident of the State of Odisha.

8. Learned counsel for the petitioner further submits that the main accused from whose conscious possession the contraband ganja was seized for the 2nd vehicle have been released on bail by this court i.e. accused Ram Ratan Yadav in BLAPL No.5829 of 2021 vide order dtd.13.09.2021 and accused Tima @ Pradeep Kishore Dalai in BLAPL No. 1563 of 2021 vide order dtd.20.07.2021. Referring to the said bail orders Mr. Rath submits that the present petitioner stands in a much better footing than those two accused persons. The contraband articles were seized from the conscious possession of the aforesaid two accused persons who have been released on bail by this court.

9. With regard to the applicability of section 37 of the NDPS Act to the facts of the petitioner's case is concerned, the learned counsel for the petitioner further submits that there is no evidence to

implicate the present petitioner in the crime. The petitioner has been arraigned as an accused on the basis of the statement of the co-accused persons made under section 67 of the NDPS Act. He further submits that the statement made by the co-accused persons under Section 67 of the NDPS Act is not admissible in evidence. In support of his contention, the learned counsel for the petitioner relies upon the judgment of the Hon'ble Apex Court in *Tofan Singh Vs. State of Tamil Nadu*, reported in (2021) 4 SCC 1 and order dtd.10.01.2022 in the matter of *State By (NCB) Bengaluru Vs Pallulabid Ahmad Arimuta & another (Special Leave to Appeal (Crl.) No.242 of 2022)*.

10. Having heard the learned counsels for the parties and upon careful scrutiny of the case record, FIR and the decisions cited by the learned counsel for the petitioner and considering the period of detention of the petitioner in jail custody and the fact that there is no antecedent in the name of the petitioner for commission of offences of similar nature, I am inclined to release the petitioner on bail subject to petitioner furnishing a bail bond of Rs.50,000/~ (Rupees Fifty Thousand) and a solvent local surety of the like amount to the satisfaction of the court in seisin of the matter. Further the release of the petitioner on bail shall be subject to following terms and conditions and violation of which shall entail cancellation of the bail granted to the petitioner hereby;

- i. He shall not tamper with prosecution evidence and threaten or influence the prosecution witnesses in any manner.
- ii. He shall cooperate with the local police and shall appear before the trial court on each date of trial without fail.

- iii. He shall appear in the police station once in every fortnight till conclusion of the trial.
 - iv. He shall not leave the jurisdiction of the trial court without prior permission of the learned trial court.
 - v. He shall provide his local address and phone number to the local police and shall immediately intimate any change in address and phone number.
 - vi. He shall not indulge in any offence of similar nature while on bail.
11. The bail application is hereby allowed subject to the terms and conditions mentioned here in above.
12. Issue urgent certified copy on proper application.

U.K.Sahoo

