

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 2132 of 2022

Babaji Behera

....

Petitioner

Mr. Dharmendra Sethy, Advocate

-Versus-

State of Odisha & Another

....

Opposite Party

Mr. S.S.Mohapatra, ASC

CORAM:
JUSTICE R.K.PATTANAIK

Order No.

ORDER
14.10.2022

- 05.
1. It is submitted that inadvertently CRLMC No. 2797 of 2022 is listed along with the present case. In that view of the matter, it is directed to be delisted forthwith.
 2. Heard learned counsel for the petitioner and Mr. Mohapatra, learned counsel for the State.
 3. Instant petition under Section 482 of Cr.P.C. at the behest of the petitioner assails the order of cognizance dated 14th February, 2022 connection with C.T. Case No. 130 of 2021 arising out of Nilgiri P.S. Case No. 93 of 2021 pending in the file of learned SDJM, Nilgiri on the grounds stated therein.
 4. Perused the copy of the F.I.R. which is at Annexure-1.
 5. Learned counsel for the petitioner submits that the petitioner is not at all involved in the alleged transportation of liquor with a quantity of 1000 litres as is shown in the seizure list dated 28th March, 2021. It is further submitted that another accused, who is similarly situated, has been granted anticipatory

bail in ABLAPL No. 1547 of 2022. There is no instruction with the learned counsel for the petitioner as to whether the petitioner had approached this Court seeking similar relief for bail.

6. So far as the challenge is concerned which is with regard to the order of cognizance but considering the materials on record and seizure as is shown under Annexure-4 and the fact that the contraband substance was recovered at the spot in the immediate presence of the petitioner with the other accused, who claims to be on anticipatory bail, the Court does not find any reason to interfere with it. In other words, there is no ground shown for interfering with the order of cognizance under Annexure-3. However, at this juncture, learned counsel for the petitioner submits that the petitioner should instead be directed to surrender since there is NBWA pending for execution and also allowed to go on bail in view of the fact that the other accused has been granted anticipatory bail in ABLAPL No. 1547 of 2022 which is strongly objected to by Mr. Mohapatra, learned counsel for the State.

7. Considering the above facts and submissions of the respective counsel appearing for the parties, the Court though not inclined to interfere with the order of cognizance under Annexure-3, it is of the view that the petitioner should be directed to surrender before the court below and apply for bail claiming parity.

8. Accordingly, it is ordered.

9. In the result, CRLMC stands disposed of with a direction to the petitioner to surrender before the court of learned SDJM, Nilgiri on or before 1st November, 2022 in connection with C.T. Case No. 130 of 2021 arising out of Nilgiri P.S. Case No. 93 of 2021 and in the event he surrenders within the stipulated time, the court shall consider the bail plea and also

claim of parity in view of the fact that the other accused, namely, Rabindra Behera is stated to be on bail vide order dated 21st April, 2022 in ABLAPL No. 1547 of 2022.

10. Urgent certified copy of this order be issued as per rules.

(R.K.Pattanaik)
Judge

