

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.6637 of 2021

Harisakar Paswan and another ***Petitioners***
Mr. Basudev Mishra, Advocate
-versus-

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

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER
16.03.2022

Order No.

05. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioners and learned counsel for the State. Perused the F.I.R., Case Diary, statement of the witnesses and other relevant documents.
3. This is an application under Section 439 of the Criminal Procedure Code.
4. The Petitioners are accused in T.R. Case No.12 of 2021 corresponding to Nabarangpur P.S. Case No.89 of 2021 pending in the court of learned Sessions Judge-cum-Special Judge, Nabarangpur for commission of offence punishable under Sections 20(b)(ii)(C)/29 of the N.D.P.S. Act, 1985.
5. The prosecution story, as narrated in the F.I.R., in brief is that on 20th February, 2021 at about 6.00 P.M., the complainant Rakesh Behera, S.I. of Police, Nabarangpur Police Station got specific information to detain four wheeler vehicle Registered bearing WB-38-W-7588. As per confidential information received by the complainant, the alleged vehicle was transporting contraband ganja from Jeypore

side to Balia (U.P.). On the very day on instruction of I.I.C. of the Police Station, the Petitioner along with police team went to Daibhata Chawk situated N.H. 26 near Indrabadi bridge. At about 11.15.A.M. the police team intercepted the alleged vehicle white colour XYLO (Mahindra vehicle), on search, it is found that there are two persons including the driver were sitting in the said vehicle. On interrogation, the persons identified themselves as one Harisankar Paswan, and other accused identified Saukat Alli. Both are residents in the State of Bihar. On further search and compliance mandatory provision under Sections 42 and 50 of the N.D.P.S. Act, the police team detected and found a chamber in between back side and middle seat covered with mat wherein the contraband ganja was kept concealed. A strong smell of ganja was coming out of the said vehicle to the police team and on removal of the mat detected 30 numbers of small and medium packets rapped, which were emitting a strong smell of ganja. After weighing the packets, the police team seized total contraband ganja of 87 Kgs. 610 grams from the said vehicle. The recovered contraband ganja was immediately seized from the accused persons arrested and forwarded to the judicial custody.

6. Learned counsel for the petitioners submits that the petitioners are in custody since 22.02.2021 and that the investigation of the case is over and the police has already submitted charge-sheet in the meantime. He further submits that the petitioners were driver and owner of the said vehicle and they are required to lookafter their families and as they have no earning male member of their families to lookafter the families. He further submits that the petitioners have been falsely implicated in this case and they have not involved in the alleged crime as the contraband ganja was not recovered from their conscious and exclusive possessions. Although the petitioners belong to State of Bihar, they are ready and willing to provide local solvent sureties and

shall appear for trial on each and every day without fail.

7. Leaned counsel for the State, on the other hand, strongly opposes the prayer for bail of the petitioners and submits that illegal trafficking of contraband articles is rising day-by-day and no leniency should be shown to the petitioners or similarly situated persons even though license of a dealer and prays for rejection for bail application of the petitioners and huge number of cases have been registered from Nabarangpur district. He further submits that quantity of ganja seized is more than commercial quantity as prescribed in the Government Notification, therefore, bar under Section 37 of the N.D.P.S. Act and the same is applicable to the facts of the present case. On the aforesaid ground, learned counsel for the State strongly urges for rejection of bail application of the petitioners.

8. Considering the submissions made by learned counsel for the parties, the petitioners are driver and owner of the vehicle and the period of detention of the petitioners for almost one year, this Court while inclining to release the petitioners on bail at this stage, directs the court in seisin over the matter to expedite the trial and conclude the same preferably by end of August, 2022. In the event the trial is not concluded within the aforesaid time, liberty is given to the petitioners to move a fresh bail application before the learned court below. In the event such bail application is filed, the same shall be considered without being influenced by any other factor.

9. With the aforesaid observation, the bail application stands disposed of.

(A.K. Mohapatra)
Judge