

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.9745 of 2022

Madhab Durka @ Madhab Duruka ***Petitioner***
Mr.Abhas Mohanty, Advocate

-versus-

State of Odisha ***Opp. Party***
Mr. S.Mishra, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

16.08.2022

Order No.

01. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner and the learned Additional Standing Counsel. Perused the records.
3. This is an application under Section 438 Cr.P.C. filed by the Petitioner for anticipatory bail.
4. The Petitioner is seeking pre-arrest bail in connection with Special G.R.Case No.63 of 2021, arising out of Special Task Force, Orkel P.S.Case No. 123 of 2021 pending in the Court of the learned Sessions Judge-cum-Special Judge, Malkangiri for commission of alleged offence punishable under sections 20(b)(ii) C of N.D.P.S.Act read with Section 25/27 of Arms Act.
5. It is submitted by the learned counsel for the Petitioner that the co-accused has already been released on bail. Further, it is submitted by the learned counsel for the Petitioner that on the basis of the co-accused statement, he has been implicated in this case He also submits that the contraband article has not been seized from the

conscious and exclusive possession of the Petitioner. He also contended that the Petitioner is ready and willing to abide by any terms and conditions that may be imposed by this Court while granting bail to the Petitioner.

6. Taking into consideration the nature of offence and non-availability of the case diary, I am not inclined to exercise any discretion under Section 438 Cr.P.C. in favour of the Petitioner.

7. However, it is observed that the Petitioner, if so advised, may surrender before the learned Sessions Judge-cum-Special Judge, Malkangiri in the aforesaid case within three weeks from today. In the event the Petitioner surrenders and moves for bail within the aforesaid period, learned Sessions Judge-cum-Special Judge, Malkangiri shall do well to dispose of the bail application of the Petitioner on the same day on merit in accordance with law by maintaining the principles of parity, if applicable. Further, while considering the bail application of the Petitioner, learned court in seisin over the matter shall also consider the law laid down by the Hon'ble Supreme Court of India in *Tofan Singh vs. State of Tamilnadu* : reported in (2021) 4 SCC 1 and order dated 10.01.2022 in the matter of *State By (NCB) Bengaluru v. Palluabid Ahmad Arimuta and another (Special Leave to Appeal (Criminal) No.242 of 2022)*. The case diary be made available to the concerned court to facilitate disposal of the bail application of the Petitioner.

8. Accordingly, the ABLAPL stands disposed of.

9. Issue urgent certified copy of this order as per Rules.

(*A.K. Mohapatra*)
Judge

