

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.9757 of 2022

Rihard Gamango

....

Petitioner

Mr. Raghunath Biswal, 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 learned Additional Standing Counsel for the State.
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 G.R. Case No.33 of 2021, arising out of Mohana P.S. Case No.32 of 2021 pending in the court of learned Special Judge-cum-District Sessions Judge, Gajapati, Paralakhemundi for commission of offences punishable under Sections 20(b)(ii)(C)/25/29 of N.D.P.S. Act.
5. The brief case of the prosecution is that while the S.I. of Mohana Police along with her officials performing their blocking duty at Kamalapur Chhak on NH-326 at around 8.15 A.M., they noticed a truck bearing Registration No.JH-02-M-7976 was coming from Lahaguda side in abnormal speed and in a suspicious manner. It is respectfully submitted that the police officials gave signal the vehicle to

stop and accordingly, the said vehicle stopped at a little distance away. Thereafter, suddenly, the driver of the said vehicle tried to run away from the spot, but the police officials were able to chase on a little distance.

6. It is submitted by the learned counsel for the petitioner that the petitioner is an innocent person having no nexus with the alleged commission of offences and the principal accused has already been released on bail and that no prima facie case is made out against the petitioner to rope him in the present case. It is also submitted by the learned counsel for the petitioner that the petitioner has not been named in the FIR. The allegations made in the FIR are omnibus in nature. It is further contended by learned counsel for the petitioner that no contraband article was seized from the exclusive and conscious possession of the present petitioner. Since the petitioner is the permanent resident of his village, there is no chance of his absconding. Lastly, learned counsel for the petitioner submits that the entire prosecution case is false, baseless and concocted and has been foisted with malafide intention. The petitioner undertook not to tamper with the prosecution evidence not to make any attempt to threaten the witnesses, in the event he is released on anticipatory bail. Further, learned counsel for the petitioner relies on 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 SCCI 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)***.

7. Learned Additional Standing Counsel on the other hand opposes the prayer for anticipatory bail of the petitioner and submits that a clear case is made out against the petitioner under the N.D.P.S. Act. He

further submits that the trafficking of contraband substances are on the rising in the Gajapati district of the State of Odisha. Therefore, no leniency should be shown to the petitioners.

8. Considering the nature of allegations and gravity of offence and the fact of the case and the fact that the petitioner has been implicated in this case under the provision of N.D.P.S. Act, I am not inclined to grant anticipatory bail to the petitioner. However, it is observed that, in the event the petitioner surrenders before the learned court in seisin over the matter within three weeks from today. The Court in seisin over the matter shall consider the same and dispose of the bail application of the petitioner on the very same day. Keeping in view 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 SCCI 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)*. Further, it is directed that the Case Diary shall be made available to the concerned court to facilitate disposal of the bail application of the petitioner.

9. Accordingly, the ABLAPL is disposed of.

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

(*A.K. Mohapatra*)
Judge