

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.9850 of 2022

Biswajit Biswal @ Julu

.... ***Petitioner***
Mr. S.R. Mohapatra, Advocate
-versus-

State of Odisha

.... ***Opp. Party***
Mr. S. Mishra, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

17.08.2022

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 Special G.R. Case No.75 of 2022, arising out of Ersama P.S. Case No.245 of 2022 pending in the court of learned Additional Sessions Judge-cum-Special Judge, Kujanga for commission of offences punishable under Sections 21(b)/29(1) of N.D.P.S. Act.
5. The brief case of the prosecution is that on 18.07.2022 at about 8:12 A.M., the informant received information regarding dealing of brown sugar business by Ayush Kumar Lenka @ Kuna at Mahimadeipur Chhak along with Red colour Hero Glamour Motorcycle bearing Registration No.OD-21-H-7243 and he concealed the drugs in his right side pant pocket. Therefore, the informant along with his staff reached at the spot and search was conducted and found a

jerry polythene containing light brown colour powder kept in the right side pant pocket of co-accused Ayush Kumar Lenka. After weighting the packet, it was found to be 6.250 grams including the weight of the polythene. The weight of the empty polythene is 0.520 grams. The net weight of brown sugar is 6.000 grams. On being asked the co-accused disclosed that he along with co-accused Siba Prasad Jena doing the brown sugar business and they are procuring the said contraband articles from the present petitioner. Hence, this case.

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 offence and 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 and on the basis of the confessional statement of co-accused person he has been implicated in the present case. 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 a 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 mala fide intention. The petitioner undertakes not to temper 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 State of Odisha. Therefore, no leniency should be shown to the petitioner.

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 vs. State of TamilNadu* : reported in (2021) 4 SCCI and order dated 10.01.2022 in the matter of *State By (NCB) Bengaluru vs. 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