

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.9915 of 2022

Kush @ Kusha Majhi & Others

.... Petitioners

Mr. S.S. Ray-2, Advocate

-versus-

State of Odisha

.... Opposite Party

Mr. M.K. Mohanty, A.S.C.

**CORAM:
JUSTICE A.K.MOHAPATRA**

**ORDER
22.08.2022**

Order No.

01. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioners and learned Addl. Standing Counsel for the State.
3. This is an application under Section 438, Cr.P.C. filed by the Petitioners for anticipatory bail, involving offence punishable under Sections 20(b)(ii)(c) and 29 of the N.D.P.S. Act.
4. Taking into consideration the nature of offence and non-availability of the Case Diary, I am not inclined to exercise my discretion under Section 438, Cr.P.C. in favour of the Petitioner.
5. However, it is observed that, the Petitioners, if so advised, may surrender before the learned Addl. Sessions Judge-cum-Spl. Judge, Gunupur in T.R. Case No.38 of 2021 corresponding to Puttasingh P.S. Case No.21 of 2021 within a period of three weeks from today. In the event the Petitioners surrender and move for bail

within the aforesaid stipulated period, learned Addl. Sessions Judge-cum-Special Judge, Gunupur shall do well to dispose of the bail application of the Petitioners on the same day on merit in accordance with law and further keeping in view the fact that the Petitioners were not present at the spot from where the seizure was made. Further, while considering the bail application of the Petitioners, the 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 Vs. Pallulabid Ahmad Arimuta and another (Special Leave to Appeal (Criminal) No.242 of 2022)*. The Case Diary be made available to the concerned court in order to facilitate in disposal of the bail application of the petitioner on the same day.

Ground of parity, if canvassed by the learned counsel for the Petitioner, shall also be taken into consideration by the Addl. Sessions Judge-cum-Special Judge, Gunpuur, while considering the bail application of the Petitioners.

6. The ABLAPL is disposed of accordingly.
7. Urgent certified copy of this order be granted as per rules.

(A.K. Mohapatra)
Judge