

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.6792 of 2021

Raju Sardar

....

Petitioner

Mr.Rajib Lochan Pattnaik, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. K.K.Nayak, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

11.05.2022

Order No.

07.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner as well as the learned Additional Standing Counsel for the State.
3. This is an application under Section 439 of the Criminal Procedure Code filed by the Petitioner to release him on regular bail in connection with Orkel P.S. Case No.132 of 2019 corresponding to T.R.Case No.100 of 2019 pending in the Court of the learned Sessions Judge-cum-Special Judge, Malkangiri for commission of an alleged offence under Sections 20(b)(ii)(C),27-A & 29 of the N.D.P.S.Act.
4. The bail application filed by the Petitioner before the learned Special Judge I/C, Malkangiri was rejected by order dated 13.05.2021.
5. The Prosecution case as revealed from the F.I.R. in short is that on 22.08.2019 at about 1.30 A.M. while S.I. of Police performing M.A. checking and blocking duty regarding movement of Naxals and verification of luggage of suspected persons, found the present Petitioner along with co-accused persons transporting 235.300 kgs in

one Mahindra Max vehicle bearing Registration No.OR-02-U-4424 and one Hyundai EON Car without registration, but at the time of detection the present Petitioner escaped from the spot, but the co-accused persons were arrested and forwarded to the Court.

5. It is submitted by the learned counsel for the Petitioner that the Petitioner is languishing in custody since 30.04.2021 and the Investigating Agency after completion of investigation submitted charge sheet in the case. It is also submitted by the learned counsel for the Petitioner that neither the informant nor any of the witnesses have made any specific allegations against the Petitioner. He also contended that basing on the co-accused statement the petitioner has been implicated in the case and nothing has been recovered nor seized from the possession of the Petitioner. It is the further submission of the learned counsel for the Petitioner that nothing has been stated against the Petitioner by the witnesses while they were examined by the Police during investigation. Learned counsel for the Petitioner further submits that the Petitioner was neither arrested from the spot nor any contraband ganja was seized from the possession of the Petitioner. As such no case under the NDPS Act is made out against the Petitioner He further submits that in view of 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 SCC 1 and order dated 10.01.2022 in the matter of **State By (CB) Begaluru vs. Pallulabid Ahmad Arimuta and another (Special Leave to Appeal (Criminal) No.242 of 2022)**. The statement made by the co-accused under Section 67 of the N.D.P.S.Act is not admissible in evidence. Learned counsel for the Petitioner submits that since the Petitioner is a permanent resident of the locality there is no chance of his absconding or fleeing away from the hands of justice. Further he submits that in the event this Court releases the Petitioner on bail, he will appear before the trial court and

cooperate with the trial and shall abide by the terms and conditions that would be fixed by this Court.

6. Learned counsel for the State on the other hand opposes the prayer for bail of the Petitioner on the ground that the contraband ganja involved in the present case is more than commercial quantity and he further submits that the co-accused have named the present Petitioner and that the Petitioner was managed to escape from the spot while search and seizure was conducting. As such he could not be apprehended at the spot. However, basing on the statement of the co-accused he was arrested later on. He further submits that trafficking of contraband substances are rising more in Nabarangpur district of the State of Odisha.

7. Having heard learned counsel for the parties and taking into consideration the surrounding facts and the materials on record and the period of custodial detention of the Petitioner and the fact that basing on the statement of the co-accused the Petitioner has been apprehended, this Court is inclined to grant bail to the Petitioner and it is directed that let the Petitioner be released on bail in the aforesaid case on furnishing a bail bond of Rs.50,000/- (Rupees Fifty thousand) with two local solvent sureties each for the like amount to the satisfaction of the learned court in seisin over the matter subject to the following terms and conditions

- i) he shall appear before the concerned Police Station once in a week preferably on Sunday between 10 A.M. to 1 P.M. till conclusion of trial.
- ii) shall cooperate with the trial of the case and shall appear in trial court on each and every date to which the case is posted.
- iii) shall not indulge in any offence of similar nature.
- iv) shall not tamper with the prosecution evidence while on bail.
- v) shall not influence or threaten any prosecution evidence while on bail.
- vi) Violation of any of the terms and conditions shall entail

cancellation of bail.

8. The Bail Application is accordingly disposed of.

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

RKS

(A.K. Mohapatra)
Judge

