

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.6807of 2021

Kamesh Benia @ Benya

.... ***Petitioner***
Mr. D.R. Bhokta, Advocate

-versus-

State of Orissa

.... ***Opposite Party***
Mr. K.K. Nayak, A.S.C. for State

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

ORDER
09.02.2022

Order No.

03. 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. Heard Sri D.R. Bhokta, learned counsel for the Petitioner and Sri K.K.Nayak, learned, learned ASC for the State. Perused the case diary, copy of the FIR, rejection order etc.
3. This is an application for bail u/s 439 Cr.P.C. in connection with T.R. Case No.80 of 2020 pending in the file of the Special Additional District and Sessions Judge,-cum-Special Judge, Koraput, in connection with Sunabeda P.S. Case No.181 of 2020, based on an FIR dtd.25.11.2020, which was lodged by the Sub-Inspector of Police, Sri Jagannath Prasad Sahoo for alleged commission of offences u/s 20(b) (ii)(c)/29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (*in short 'NDPS Act'*).
4. The prosecution allegation as unfolded from the FIR, in a nut shell, is that the S.I. of Police (informant) upon getting reliable information regarding storage and transport of huge quantity of

Ganja. He along with other officials went to the spot and identified the accused Govinda Khora, who was standing near the materials keeping a motor cycle with him. He was arrested on the spot. It is alleged that after observing all formalities of NDPS Act, they seized a total quantity of 211 kgs of Ganja from the accused Govinda Khorda. Accordingly, all the contraband substances were seized from the spot and a case as stated above was registered.

5. Learned counsel for the petitioner submits that the present petitioner is an innocent person and he was no way connected with the alleged crime and nothing has been seized on his conscious possession. Only on the basis of confessional statement, he was arrested and forwarded to jail and since then he is languishing in jail custody 06.07.2021. He further submits that the petitioner has been implicated in this case on the basis of an alleged statement of a co-accused recorded under section 67 of the NDPS Act.

6. Sri K.K.Nayak, learned ASC on the other hand submits that the plea taken by the petitioner is completely false and vague. He further submits that the petitioner has confessed in the investigation that he procured the contraband materials from Kamesh Benia and Vicky Khan. On the spot of the occurrence, he was transporting a huge quantity of contraband Ganja (211 Kgs.). Since the quantity contraband articles involved in the present case is more than the commercial quantity, the bar under section 37 of the NDPS Act applies to the case of the petitioner and as such the petitioner is not entitled to be released on bail by this court. He further expresses his apprehension that in the event the petitioner is released on bail, he may not cooperate with the trial.

7. With regard to the applicability of section 37 of the NDPS Act to the facts of the petitioner's case is concerned, the learned counsel for the petitioner further submits that there is no evidence to implicate the present petitioner in the crime. The petitioner has been arraigned as an accused on the basis of the statement of the co-accused persons made under section 67 of the NDPS Act. He further submits that the statement made by the co-accused persons under Section 67 of the NDPS Act is not admissible in evidence. In support of his contention, the learned counsel for the petitioner relies upon the judgment of the Hon'ble Apex Court in *Tofan Singh Vs. State of Tamil Nadu*, reported in (2021) 4 SCC 1 and order dtd.10.01.2022 in the matter of *State By (NCB) Bengaluru Vs Pallulabid Ahmad Arimuta & another (Special Leave to Appeal (Crl.) No.242 of 2022)*.

8. Having heard the learned counsels for the parties and upon careful scrutiny of the case record, FIR and the decisions cited by the learned counsel for the petitioner and considering the period of detention of the petitioner in jail custody and the fact that there is no antecedent in the name of the petitioner for commission of offences of similar nature, I am inclined to release the petitioner on bail subject to petitioner furnishing a bail bond of Rs.50,000/~ (Rupees Fifty Thousand) and a solvent local surety of the like amount to the satisfaction of the court in seisin of the matter. Further the release of the petitioner on bail shall be subject to following terms and conditions and violation of which shall entail cancellation of the bail granted to the petitioner hereby;

- i. He shall not tamper with prosecution evidence and threaten or influence the prosecution witnesses in any manner.

- ii. He shall cooperate with the local police and shall appear before the trial court on each date of trial without fail.
 - iii. He shall appear in the police station once in every fortnight till conclusion of the trial.
 - iv. He shall not leave the jurisdiction of the trial court without prior permission of the learned trial court.
 - v. He shall provide his local address and phone number to the local police and shall immediately intimate any change in address and phone number.
 - vi. He shall not indulge in any offence of similar nature while on bail.
9. The bail application is hereby allowed subject to the terms and conditions mentioned here in above.
10. Issue urgent certified copy on proper application.

(A.K. Mohapatra)
Judge