

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.10069 of 2022

Benudhar Dehury

....

Petitioner

Mr.Rakesh Kumar Das, Advocate

-versus-

State of Odisha

....

Opp. Party

Mr. P.C.Das, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

30.08.2022

Order No.

- 02.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. Heard learned counsel for the Petitioner and the learned Additional Standing Counsel. Perused the records.
 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 T.R.Case No.47 of 2020, arising out of Machhkund P.S.Case No.77 of 2020 pending in the Court of the learned Additional Sessions Judge-cum-Special Judge, Koraput for commission of alleged offence punishable under sections 20(B)(ii)(C),25of the NDPS Act.
 5. It is submitted by the learned counsel for the Petitioner that the Petitioner is the owner of the vehicle, which was used in crime without the knowledge of the Petitioner. Further, it is submitted by the learned counsel for the Petitioner that there is no specific allegation against the Petitioner in the F.I.R. The Petitioner is apprehending arrest on the ground that the vehicle which was seized

stands recorded in his name. Since no contraband articles were recovered from the conscious and exclusive possession of the present petitioner, therefore bar under section 37 of the N.D.P.S. Act is not attracted in the present case.

6. Taking into consideration the nature of offence and non-availability of the case diary, I am not inclined to exercise any discretion under Section 438 Cr.P.C. in favour of the Petitioner.

7. However, it is observed that the Petitioner, if so advised, may surrender before the learned Additional Sessions Judge-cum-Special Judge, Koraput in the aforesaid case within three weeks from today. In the event the Petitioner surrenders and moves for bail within the aforesaid period, learned Additional Sessions Judge-cum-Special Judge, Koraput shall do well to dispose of the bail application of the Petitioner on the same day on merit in accordance with law. Further, while considering the bail application of the Petitioner, 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 v. Palluabid Ahmad Arimuta and another (Special Leave to Appeal (Criminal) No.242 of 2022)*. The case diary be made available to the concerned court to facilitate disposal of the bail application of the Petitioner.

8. Accordingly, the ABLAPL stands disposed of.

9. Issue urgent certified copy of this order as per Rules.

(*A.K. Mohapatra*)
Judge