

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 7995 of 2022

Pitambar Nayak

....

Petitioner

Mr. U.Ch. Jena, Advocate

-versus-

State of Orissa

....

Opposite Party

Mr. P.K. Maharaj, ASC

CORAM: JUSTICE V. NARASINGH

ORDER

06.09.2022

Order No.

01.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned counsel for the State.
3. The petitioner is accused in Nayagarh P.S. Case No.155 of 2021 corresponding to T.R. Case No.77 of 2022, pending in the Court of learned Special Judge-cum-Sessions Judge, Nayagarh, for alleged commission of offences under Sections 20(b)(ii)(C)/25/29 of NDPS Act.
4. Being aggrieved by the Rejection of his application for bail U/s.439 Cr.P.C. by the learned Sessions Judge -cum- Special Judge, Nayagarh, by order dated 16.08.2022 in the aforementioned case, the present BLAPL has been filed.
5. Learned counsel for the petitioner submitted that by order dated 21.09.2021 the co-accused Sujit Hati and others, who were admittedly present in the vehicle carrying contraband, were released on bail. Hence it is submitted that as the implication of the petitioner was on the basis of co-accused statement, his further

continuance in custody is unwarranted, in view of the law laid down in the case of *Tofan Singh vs. State of Tamil Nadu*, reported in *(2020) 80 OCR (SC)-641*.

6. Learned counsel for the State opposes the prayer for bail inter alia submits that the dictum of *Tofan Singh* (Supra) cannot be relied on at the stage of grant of bail, in view of the Bar under Section 37 of N.D.P.S. Act. He also refutes the assertion relating to parity.

7. Taking into account the release of the co-accused, manner of accusation and the quantity of the contraband seized being 20Kg 800gms, this Court directs the petitioner to be released on bail on such terms to be fixed by the Court in seisin over the matter.

8. Accordingly, the BLAPL stands disposed of.

9. Urgent certified copy of this order be granted as per rule.

Ayesha

