

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 8011 of 2022

Rathu Singh

....

Petitioner

Mr. S.K. Rout, Advocate

-versus-

State of Orissa

....

Opposite Party

Mr. K.K. Gaya, ASC

CORAM: JUSTICE V. NARASINGH

ORDER

08.12.2022

Order No.

02.

1. Heard learned counsel for the petitioner and learned counsel for the State.
2. The petitioner is an accused in T.R. Case No.39 of 2022, pending before the learned Court of the Additional Sessions Judge-cum-Special Judge, Koraput, arising out of Padwa P.S. Case No.27 of 2022, for commission of alleged offences under Sections 20(b)(ii)(C)/25 of NDPS Act.
3. Being aggrieved by the rejection of his application for bail U/s.439 Cr.P.C. by the learned Additional Sessions Judge-cum-Special Judge, Koraput, by order dated 25.07.2022 in the aforementioned case, the present BLAPL has been filed.
4. It is submitted by learned counsel that the petitioner is in custody since 27.03.2022 on the accusation of being in possession of contraband to the tune of 30Kgs (Ganja) and relying on the submission of the learned counsel for the State that charge-sheet has been filed on 23.09.2022, his further continuance in custody is unwarranted.

5. It is submitted by the learned counsel for the petitioner that on a bare perusal of the FIR, it can be seen that three bags containing 10Kgs of Ganja each, marked individually as Exhibits A, B & C, were seized.

6. It is stated that though the seizure was individual but to implicate the petitioner in the offence involving more than commercial quantity, such independent seizure has been clubbed together so as to attract the bar contained under Section 37 of the NDPS Act. Hence, the petitioner seeks release in view of the filing of charge-sheet, as noted.

7. Learned counsel for the State opposes the prayer and submits that the defence of individual seizure is of less than the commercial quantity as put forth by the learned counsel for the petitioner cannot be taken into account at this stage, while considering the prayer for bail in view bar contained under Section 37 of NDPS Act.

8. Taking into account the seizures as made and filing of the charge-sheet, this Court directs the petitioner to be released on bail on such terms to be fixed by the learned Court in seisin over the matter.

9. To allay the legitimate apprehension of the learned counsel for the State that as the petitioner does not reside within the territorial jurisdiction of the Court in seisin, his presence cannot be ensured during the trial, this Court directs that one of the immediate family members shall execute a personal bond.

10. Learned counsel for the petitioner is not in a position to apprise this Court regarding the criminal antecedent of the petitioner.

11. Before releasing the petitioner, learned Court in seisin shall verify assertion regarding the criminal antecedents of the petitioner. If it comes to the fore that the petitioner **has any criminal antecedent**, this order shall stand recalled.
12. Accordingly, the BLAPL stands disposed of.
13. Urgent certified copy of this order be granted as per rules.

(V. NARASINGH)
Judge

Ayesha

