

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 8014 of 2022

Elisabha Majhi & Others

....

Petitioners

Mr. S.S. Ray(2), Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. K.K. Gaya, ASC

CORAM: JUSTICE V. NARASINGH

ORDER

14.10.2022

Order No.

02.

1. This matter is taken up through hybrid mode.
2. Heard learned Senior Counsel for the petitioners and learned Additional Standing Counsel for the State.
3. The petitioners are an accused in connection with T.R. Case No.35 of 2021, pending in the file of learned Additional Sessions Judge-cum-Special Judge, Gunupur, arising out of Puttasingh P.S. Case No.18 of 2021, for commission of offences under Section 20(b)(ii)C/29 of the NDPS Act.
4. Being aggrieved by the rejection of their application for bail U/s.439 Cr.P.C. by the learned Additional Sessions Judge-cum-Special Judge, Gunupur, by order dated 17.08.2022 in the aforementioned case, the present BLAPL has been filed.
5. It is submitted by the learned counsel for the petitioners that one Subash Majhi who was similarly circumstanced inasmuch as he was also implicated on the basis of the statement of the co-accused Sunil Majhi who was apprehended at the spot, has been released on bail by this Court by order dated 09.08.2021 in BLAPL No.1906 of 2021, the said order is on record at Annexure-4. Hence,

on the ground of parity the petitioners seek release on bail and it is also submitted that the petitioners are the first offender.

6. Learned counsel for the State opposes the prayer for bail inter alia on the ground that in view of the Bar contained under Section 37 of the NDPS Act, question of parity cannot be considered.

7. Taking into account that charge-sheet has been already filed on 19.12.2021 and non commencement of trial, this Court directs the petitioners to be released on bail, keeping in view the dictum of the Apex Court in the in case of *Hussainara Khatoon & Others Vrs. State of Bihar*, reported in (1980) 1 SCC 81,. The learned Court in seisin over the matter shall fix the terms so as to ensure the presence of the petitioners on each date of trial.

8. While releasing the petitioners on bail, the learned Court below shall verify the criminal antecedent of the petitioners. If it comes to the fore that the petitioners have any criminal antecedent, this order shall stand recalled without any further reference to this Court.

9. Accordingly, the BLAPL stands disposed of.

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

(V. NARASINGH)
Judge

Ayesha