

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 8016 of 2022

Madhu Majhi & Others

....

Petitioners

Mr. S.S. Ray 2, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. A. Pradhan, ASC

CORAM: JUSTICE V. NARASINGH

ORDER
26.10.2022

Order No.

03.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioners and learned counsel for the State.
3. The petitioners are accused in connection with T.R. Case No.37 of 2021, pending in the file of learned Additional Sessions Judge-cum-Special Judge, Gunupur, arising out of Puttasingh P.S. Case No.20 of 2021, for alleged commission of offences under Section 20(b)(ii)(C)/29 of N.D.P.S. 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 the co-accused Jikaniya Majhi has since been released on bail by order dated 07.09.2022 in BLAPL No.3524 of 2021 and it is

stated that the petitioners were taken into custody on surrendering on 17.08.2022.

6. It is further submitted by the learned counsel for the petitioners that since the accused who was arrested at the spot, has since been released on bail and the investigation in the case at hand has been concluded and as the petitioners who are the first offender, they ought to be released on bail.

7. Learned counsel for the State opposes the prayer for bail inter alia on the ground that the petitioners are not similarly circumstanced with the one who has been released on bail inasmuch as independent witness has implicated the petitioners.

8. It is also further stated that keeping in view the quantity of contraband seized and in view of the bar contained under Section 37 of the N.D.P.S. Act, question of parity cannot be considered at this stage.

9. On careful examination of the materials on record, it is seen that the accused who has since been released on bail, was nabbed at the spot whereas the present petitioners have been implicated on the basis of the statement of independent witness.

10. Taking into account that the petitioners have no criminal antecedents and the manner of the seizure being admittedly from a public road, conscious exclusive possession cannot be attributed to the petitioners so as to attract the bar under Section 37 of the N.D.P.S. Act, Hence, this Court directs the petitioners to be released on bail on such terms to be fixed by the Court in seisin over the matter.

11. While releasing the petitioners on bail, the learned court in seisin over the matter shall verify criminal antecedent of the

petitioners. If it comes to the fore that the petitioners have 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 rule.

(V. NARASINGH)
Judge

Ayesha

