

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.8064 of 2022

Balwan Singh @ Balwan

....

Petitioner

Mr. Sk. Zafarulla, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. A. Pradhan, ASC

CORAM: JUSTICE V. NARASINGH

ORDER
20.10.2022

Order No.

02.

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 an accused in T.R Case No.30 of 2022 pending in the file of learned Addl. Sessions Judge-cum-Special Judge, Koraput, arising out of Nandapur P.S Case No.23 of 2022, for commission of offence under Sections 20(b)(ii)(C) of the N.D.P.S. Act and is in custody since 01.03.2022.
4. Being aggrieved by the rejection of his application for bail U/s.439 Cr.P.C. by the learned Addl. Sessions Judge-cum-Special Judge, Koraput by order dated 23.07.2022 in the aforementioned case, the present BLAPL has been filed.
5. It is submitted by the learned counsel for the Petitioner that the manner in which the contraband has been seized and the Petitioner who was standing near the bag containing 23 Kg. 100

gms. of Ganja, it cannot be said that the Petitioner is conscious and exclusive possession of the same so as to attract the rigor of Section 37 of the N.D.P.S. Act. It is further submitted that as admittedly charge sheet having been filed in the meanwhile, further continuance of the Petitioner in custody is unwarranted.

6. Learned counsel for the State opposes the prayer for bail and submits that from the materials on record and the submission made regarding the mens rea of the Petitioner and in view of the bar contained in Section 37 of the N.D.P.S Act and taking into account that the Petitioner is not the residence of the State, he ought not to be released on bail since his presence cannot be obtained at the trial.

7. Taking into account the manner in which the seizure has been effected and the Ganja seized is 23 Kg. 100 gms., 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 and to ensure his presence on each date of trial.

8. While enlarging the Petitioner on bail the learned court below shall verify the assertion regarding his criminal proclivity. If it comes to the fore that the Petitioner has any criminal antecedent, this order shall stand recalled.

9. Accordingly, the BLAPL stands disposed of.

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

(V. NARASINGH)
Judge

PKS