

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL NO.7387 OF 2021

Rama Singh Bindhani

....

Petitioner

Mr. S.D. Das, Sr. Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. D.R. Parida, ASC.

CORAM:

MR. JUSTICE D.DASH

ORDER

20.05.2022

Order No.

05.

1. This matter is taken up through hybrids arrangement (virtual/ physical) mode.
2. This is the second journey of the Petitioner, who is in custody in connection with Balliguda P.S. Case No.111 of 2020 corresponding to C.T. Case No.24 of 2020 pending on the file of learned Special Judge-cum-Additional District & Sessions Judge, Balliguda, running for the alleged commission of offence under section 20(b)(ii)(C)/25/29 of the NDPS Act, in filing this application under section 439, Cr.P.C., for his release on bail in the above mentioned case.
3. Mr. S.D. Das, learned Senior Counsel for the Petitioner submitted that on the allegation that the Petitioner is involved in transportation of commercial quantity of contraband ganja, he being arrested in the case, is in custody since 29.06.2020. He submitted that the prosecution allegation is that the Tractor in question which was driven by accused Sanjib Khatua on being detained after chase and searched; there has been recovery of

15nos. of bags containing contraband ganja weighing in total 353 Kgs. 550 grams. He submitted that this Petitioner has been implicated solely on the basis of the statement of that co-accused-Sanjib and it being said that the Tractor was then piloted by a motorcycle, nothing further is stated as to who was the rider or that it too was having a pillion rider or not. It was submitted that the statement of co-accused (driver of the Tractor) that under the direction of this Petitioner ganja had been procured and he was carrying and that this Petitioner too was following the tractor do not drive support from any such material/s being collected in the investigation which is complete and interestingly, no one has stated to have seen this Petitioner following the said tractor. He submitted that the so called confession of co-accused-Sanjib, further implicating this Petitioner when is inadmissible in the trial as has been held in case of *Tofan Singh Vrs. State of Tamil Nadu*; (2021) 4 SCC 1, further detention of the Petitioner in custody is not warranted. It was submitted that when the contraband was not in possession of the Petitioner and no other materials have also been collected to connect him with the said seized contraband ganja, the Petitioner is also having no such record as to his involvement in commission of similar offences. In view of all these above, according to him, in so far as this Petitioner is concerned, the bar contained under section-37 of the NDPS Act at this stage would not stand on the way of grant of bail to the Petitioner. Therefore, as there remains no scope on the part of the Petitioner to flee from justice since he is a permanent resident of the District of Kandhamal and the question of tampering the

evidence does not arise as most of the witnesses are officials; he urged for reconsideration of the prayer for grant of bail to the Petitioner as according to him, further detention of the Petitioner in custody till conclusion of the trial which too is having tardy progress would not be in the interest of justice.

4. Learned counsel for the State opposes the move. According to him, there being no changing circumstance after rejection of the prayer for grant of bail to the Petitioner who is facing the trial for having the involvement in transportation of such huge quantity of contraband ganja; his release on bail is not warranted. He further submitted that this is not the stage to rule on the admissibility of evidence sought to be used in the trial.

5. Taking into account the submissions made; further keeping in view the materials available on record as against the Petitioner and other surrounding circumstances, including the period of detention of the Petitioner in custody as well as the pace in which the trial is progressing; while being inclined to reconsider the prayer for grant bail to the Petitioner in the aforesaid case, it is directed that the Petitioner be released on bail on such terms and conditions as deemed just and proper by the Court in seisin of the case with further conditions that:-

1. the Petitioner will appear before the Court in seisin of the case on each date of posting of the case till conclusion of the trial;
2. he will appear before the IIC, Balliguda P.S. every Monday in between 10 am to 2 pm till conclusion of the trial;

3. he will not leave the jurisdiction of the District of Kandhamal; and
4. he will not indulge himself in commission of similar type of offences.

Violation of any of the condition(s) shall entail cancellation of bail.

6. The BLAPL is accordingly disposed of.
Issue urgent certified copy as per rules.

Narayan



***(D. Dash),
Judge.***