

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.8389 of 2022

Biranchi Kumar Nayak

....

Petitioner

Mr. T.P. Mohapatra, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. K.K. Gaya, ASC

CORAM: JUSTICE V. NARASINGH

ORDER
20.12.2022

Order No.

02.

1. Heard learned counsel for the Petitioner and learned counsel for the State.
2. The Petitioner is an accused in Special G.R. Case No.82 of 2022 pending on the file of learned Special Judge, Puri, arising out of P.R No.55 of 2022-23, for commission of the offence alleged under Section 20(b)(ii)(C) of the N.D.P.S Act.
3. Being aggrieved by the rejection of his application for bail U/s.439 Cr.P.C. by the learned Special Judge, Puri by order dated 05.08.2022 in the aforementioned case, the present BLAPL has been filed.
4. It is submitted by the learned counsel that the Petitioner is in custody since 14.06.2022 and final P.R. has been filed on 25.07.2022 on the allegation that the Petitioner was possessing contraband ganja to the tune of 21 Kg.
5. It is stated that the seizure was from a public place and there are no materials on record to indicate that the Petitioner had conscious

exclusive possession. It is further submitted that wrong weighment cannot be ruled out so as to attract the bar contained in Section 37 of the N.D.P.S Act.

6. Learned counsel for the State opposes the prayer, inter alia, relying on Section 37 of the N.D.P.S Act since contraband is admittedly beyond the commercial quantity.

7. Taking into account the manner in which the seizure has been effected, 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.

8. Learned counsel for the Petitioner submits that he is not in a position to apprise this Court about the criminal antecedent of the Petitioner.

9. While releasing the Petitioner on bail, learned Court below shall verify assertion regarding **criminal antecedent of similar nature**. If the Petitioner has any such criminal antecedent, this order shall stand recalled.

10. The BLAPL thus stands disposed of.

11. Urgent certified copy of this order be granted as per rules.

(V. NARASINGH)
Judge

PKS