

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.10780 of 2022

Balmiki @ Balmika Khandagiri ***Petitioner***
Mr. Biswajit Ranjan Tripathy, Advocate
-versus-

State of Odisha ***Opp. Party***
Mr. M.K. Mohanty, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

12.09.2022

Order No.

01. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the petitioner and learned Additional Standing Counsel for the State.
3. This is an application under Section 438, Cr.P.C. filed by the petitioner for anticipatory bail.
4. The petitioner is seeking pre-arrest bail in connection with Boudh P.S. Case No.303 of 2021 corresponding to Special Case (NDPS) No.67 of 2021 pending in the court of learned Sessions Judge-cum-Special Judge, Boudh for commission of offence punishable under Sections 20(b)(ii)(C) & 29 of the N.D.P.S. Act.
5. It is submitted learned counsel for the petitioner that initially, the name of the petitioner was mentioned in the F.I.R. and basing on the statement of another co-accused, the petitioner has been falsely implicated in the present case and he was not arrested at the spot. He further submits that, neither any incriminating materials have been seized from the conscious possession of the petitioner, nor he was

arrested at the spot.

6. Taking into consideration the nature of offence and non-availability of the case diary, I am not inclined to exercise my discretion under Section 438, Cr.P.C. in favour of the petitioner.

7. However, it is observed that the petitioner, if so advised, may surrender before the learned Sessions Judge-cum-Special Judge, Boudh in the aforesaid Special Case within three weeks from today. In the event the Petitioner surrenders and moves for bail within the aforesaid period, learned Sessions Judge-cum-Special Judge, Boudh shall do well do dispose of the bail application of the petitioner on the same day on merit in accordance with law and further keeping in view that the petitioner was not present at the spot from where the seizure was made. Further, while considering the bail application of the petitioner, the learned court in seisin over the matter shall also consider the law laid down by the Hon'ble Supreme Court of India in ***Tofan Singh vrs. State of Tamilnadu*** : reported in ***(2021) 4 SCC 1*** and order dated 10.01.2022 in the matter of ***State By (NCB) Bengaluru vrs. Pallulabid Ahmad Arimuta and another (Special Leave to Appeal (Criminal) No.242 of 2022)***. The Case Diary be made available to the concerned court to facilitate disposal of the bail application of the petitioner.

8. The ABLAPL is disposed of accordingly.

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

(A.K. Mohapatra)
Judge