

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.7553 of 2021

Subrata Mandal

.... ***Petitioner***
Mr. P.K.Nanda, Advocate

-versus-

State of Odisha

.... ***Opposite Party***
Mr. M.K.Mohanty, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER
18.02.2022

Order No.

04.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard Mr.Nanda, learned counsel for the Petitioner and learned counsel for the State.
3. This is an application under Section 439 of the Criminal Procedure Code.
4. The Petitioner is an accused in Spl.G.R.Case No.70 of 2021 arising out of Orkel P.S. Case No.139 of 2021 pending in the court of learned Sessions Judge-cum-Special Judge, Malkangiri for commission of offence punishable under Sections 20(b)(ii)(C)/27-A of the N.D.P.S. Act.
5. Learned counsel for the Petitioner submits that the Petitioner is the driver of the vehicle from where contraband ganja was seized. The contraband ganja were in two numbers of plastic bag kept in the back side of the dickey of the vehicle. Learned counsel for the Petitioner

submits that the bags belong to the other occupants of the vehicle, who are tourist, who had come to visit the area. The occupants of the vehicle have been arrested and are in custody. In such view of the matter, it cannot be presumed that the contraband articles were seized from the exclusive and conscious possession of the Petitioner. Therefore, Section 37 of the NDPS Act is attracted. It is further submitted by the learned counsel for the Petitioner that the present petitioner is in custody since 02.08.2021 and there is no antecedents against the present Petitioner.

6. Learned counsel for the State vehemently opposes the prayer for bail of the Petitioner and submits that since the Petitioner was apprehended from the spot, it can be presumed that the contraband articles were seized from his conscious possession. Further, learned counsel appearing for the State submits that number of such cases are increasing day-by-day and no leniency should be shown to the Petitioner or similarly situated persons.

7. Having heard learned counsel for the parties and considering the allegations made against the Petitioner and keeping in view the role of the Petitioner and the period of custodial detention of the Petitioner as well as the applicability of Section 437 of the Act to the fact of the case, it is directed that let the Petitioner be released on bail in the aforesaid case on furnishing a bail bond of Rs.50,000/- (rupees fifty thousand) with two local solvent sureties each for the like amount to the satisfaction of the learned court in seisin over the matter subject to conditions that the Petitioner shall not be involved in any offence of similar nature, he shall not tamper with the prosecution evidence or try to threaten or influence the witnesses in any manner whatsoever, shall appear before the concerned Police Station in a fortnight preferably on Sunday between 10 A.M. to 1 P.M till completion of the trial and shall appear before the court during trial on each date. Violation of any of

the terms and conditions shall entail cancellation of bail.

8. It is open for the court in seisin over the matter to impose other conditions as may deem just and proper.

9. It is further directed that the bail granted to the Petitioner is subject to the condition that learned court below shall verify whether the Petitioner has any criminal antecedents. In the event it is found that the Petitioner has any such criminal antecedents, this bail order shall automatically stands revoked.

10. The Bail Application is accordingly disposed of.

11. Urgent certified copy of this order be granted on proper application.

RKS

