

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.8546 of 2022

Ashish Khairvar @ Rikki

....

Petitioner

Mr. S.S. Ray-2, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. K.K. Gaya, ASC

CORAM: JUSTICE V. NARASINGH

ORDER
10.11.2022

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 connection with T.R. Case No.24 of 2022 pending on the file of the learned Sessions Judge, Khurda at Bhubaneswar, arising out of Bhubaneswar P.S. Case No.04 of 2022 for alleged commission of offence under Sections 20(b)(ii)(C) of the N.D.P.S Act.
4. Being aggrieved by the rejection of his application for bail U/s. 439 Cr.P.C. by the learned 2nd Addl. Sessions Judge, Bhubaneswar, by order dated 29.08.2022, the present BLAPL has been filed.
5. It is submitted by the learned counsel for the Petitioner that the Petitioner is in custody since 12.01.2022 and it is submitted with vehemence that the seizure from the Petitioner is to the tune of

28 Kg. 700 grms (ganja) in two bags. It is stated that the manner in which the seizure has been taken place, conscious exclusive possession cannot be attributed to the Petitioner.

6. Learned counsel for the State opposes the prayer for bail, inter alia, on account of the bar contained in Section 37 of the N.D.P.S Act and also on the ground that since the Petitioner does not reside within the territorial jurisdiction of the learned Court in seisin, releasing him on bail at this stage would affect the trial.

7. Taking into account the age of the Petitioner and keeping in view the bleak chance of early trial and keeping in view the mandate of the apex Court in the case **Hussainara Khatoon & others vrs. State of Bihar** reported in (1980) 1 SCC 81, this Court directs release of the Petitioner.

8. To allay the legitimate concern expressed by the learned Public Prosecutor that since the Petitioner does not reside within the territorial jurisdiction of the learned Court in seisin, his presence cannot be ensured during trial, learned Court in seisin is called upon to fix the suitable terms so as to ensure his presence on each date of trial.

9. Learned Court in seisin over the matter shall also verify the criminal antecedents of any nature. If it comes to the fore that the Petitioner has any 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