

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.7622 of 2021

Kadraka Nabin and another ***Petitioners***
Mr. Gopal Krushna. Mohanty, Advocate
-versus-

State of Odisha ***Opposite Party***

Mr. M.K. Mohanty, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER
06.07.2022

Order No.

- 08.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. Heard learned counsel for the petitioners and learned counsel for the State. Perused the F.I.R., case diary and other relevant documents placed on record as well as statement of the witnesses.
 3. This is an application under Section 439 of the Criminal Procedure Code for grant of regular bail in connection with G.R. Case No.37 of 2021 arising out of Adava P.S. Case No.22 dated 30.01.2021 pending in the court of learned Special Judge, Gajapati at Paralakhemundi for commission of offence punishable under Sections 20(b)(ii)(C)/25/29 of the N.D.P.S. Act.
 4. The prosecution case, in a nutshell, is that the informant lodged an F.I.R. on 03.01.2021 at 4.59 A.M. inter alia alleging that the informant along with police personnel were conducting patrolling duty at Nala Ghat Mere and Raipanka areas, at about 3.10 A.M. they noticed two numbers of vehicles, namely, one Mahindra Bolero Pick Up FB

vehicle bearing Registration No.AP-31-TA-0850 and Ashok Leyland vehicle bearing Registration number AP-05-TD-8597 proceeding towards Adava very speedily from Raipanda side. Out of suspicion, the informant along with other police personnel chased both the vehicles and finally stopped the vehicles. Thereafter, vehicles were searched by the informant and other police personnel and they found six persons were sitting in two vehicles with 14 packets of suspected contraband ganja along with other incriminating materials. On verification of the packets, police could detect that such packets were containing contraband ganja. Thereafter, on going through all other formalities, the six accused persons were arrested and contraband ganja was seized. Hence, the present case.

5. It is submitted by learned counsel for the petitioners that the petitioners are the drivers of the two vehicles and they are innocent persons and languishing in custody since 30.01.2021. It is further submitted that an investigation of the case has been completed and charge-sheet has been submitted by the Investigating Officer.

6. Learned counsel for the petitioners referring to the statement of one Rajveer submits that said Rajveer in this statement admitted before the police that he belongs to Panchkula district of Haryana and that he along with his family members is dealing in different types of plastics mats, door mats and winter shawls. Further said accused Rajveer has also stated that he used to move around in the remote villages of Gajapati and Rayagada district in connection his business of selling plastic mats. While he was in village Mandimera G.P. area, he was allured by local youth to enter into the illegal business of trafficking of contraband ganja and he assured that he will get more money. Accordingly, accused Ranveer arranged money through co-accused Wakil Singh and purchased contraband ganja from him.

7. Further, referring to the statement of the accused Ranveer, learned counsel for the petitioners submits that after contraband ganja was arranged, the accused Ranveer contacted S. Durga Prasad, who is the owner of the two vehicles and admittedly runs a transport business. The present petitioners, who are from poor family background are drivers employed by said S. Durga Prasad transport business owner, who had let out two vehicles to accused Rajveer for transportation of his goods.

8. It is also a matter of record that the police party, who have conducted the search and seizure preparing seizure list as stated that the alleged 14 numbers packets of contraband ganja was found to be concealed inside rolled plastic mats. The petitioners, who are drivers of the two vehicles, had absolutely no knowledge about the presence of contraband ganja in their vehicles which were kept concealed in the rolled plastic mats. Further, this Court had earlier directed to learned counsel for the State to obtain CDR report of the phones of the present petitioners and accused Rajveer. On instruction, learned counsel for the State submits that from the CDR report it was found that the accused Rajveer had never contacted the present petitioners prior to the date of occurrence. In such view of the matter, learned counsel for the petitioners submits that the alleged contraband ganja weighting 417 Kgs. 300 grams were kept in the two vehicles without the knowledge of the present petitioners. Therefore, he contends that it cannot be presumed that the alleged contraband ganja was recovered from the exclusive and conscious possession from the petitioners in absence of any materials to establish such fact. Therefore, he submits that the bar under Section 37 of the N.D.P.S. Act would not stand in the way to release the petitioners on bail.

9. The word “possession” has been defined in the English

Dictionary as well as many judgments of the Hon'ble Supreme Court. Black's Dictionary defines the word "possession" in the following terms "having contrary over a thing that intend to have and to exercise such contrary. The contention and contrary, or the manual or ideal custody, for anything which may speak of property, for one used enjoyment either as owner or as proprietor for quantify in it either held personally or by another who exercises it in one place and name. Act or state of possessing. That condition of facts under which one can exercise his power for corporeal thing it is a pleasure to exclusion or other persons"

Further in the very same dictionary the word 'exclusive possession' has also been defined. The word 'exclusive possession' has been defined in the following words:-

"That the exclusive possession by adverse possession means that adverse possession must show an exclusive dominion over the land and appropriation to his own use or benefit and not for another. Possession may be exclusive so as to entitled possession to title by adverse possession, notwithstanding that is subject to exercise easement by provide bail."

In the case of *Avtar Singh and others vrs. State of Punjab* : reported in (2002) 7 SCC 419, the Hon'ble Supreme Court of India had an occasion to consider the meaning of word 'possession' in the very same judgment, which has been observed by the Hon'ble Supreme Court of India :

"The word possession no doubt different states of meaning and it is quite elastic in its connotation possession and ownership need not in other words go together but, the minimum requisite elements it has to be satisfied his

custody or contrary over the goods. It can be said, on the basis of the evidence available on record that during appointments one of whom was driving vehicle and other two sitting a box having some custodian or contrary? It is difficult to read such conclusion beyond reasonable doubt. It transpires from the evidence that the appellants were not the only occupants. One of the persons, who are sitting in the cabin and another person sitting on the back of the truck, made themselves scares after seeing police and prosecution could not establish their identity. It is quite proper that one of them to the custodian of goods whether or not he was the proprietor. The persons who are merely sitting in the back absence anything more cannot be presumed in possession of goods.”

10. Applying aforesaid analogy to the facts of the present case and further taking into consideration the statement of accused Rajveer Singh, this Court is of the considered view, that in the facts and circumstances of the present case it cannot be presumed that the contraband ganja packets which were kept concealed inside plastic mats were within the exclusive and conscious possession of the present petitioners, who are only drivers of the vehicles and were admittedly hired by said Rajveer Singh for transportation of plastic mats from Mandimera area to Haryana.

11. Learned counsel for the State, on the other hand, submits that there are ample incriminating materials on record to implicate the present petitioners in the alleged crime. He further contends that when goods were loaded in the vehicles the drivers of the two vehicles are supposed to know what is being loaded in their trucks. However, on query being asked by this Court, as to whether the materials that were

loaded on the trucks were plastic rolled mates, whether there is any evidence to establish the knowledge and ownership of the contraband ganja and learned counsel for the State had no answer to such a query raised by this Court. However, so far the contraband ganja is concerned, learned counsel for the State submits that the accused Rajveer Singh admitted that he had hired the trucks for transportation of alleged contraband ganja in collaboration of another accused, namely, Wakil Singh, who is stated to have purchased contraband ganja with Rajveer Singh. Further, learned counsel for the State opposes the bail application of the petitioners on the ground that illegal trafficking of contraband ganja cases, are rising every day in the State of Odisha. Therefore, no leniency should be shown to the present petitioners or similarly situated persons releasing them on bail.

12. Having heard the contentions of the learned counsels for both the sides and upon careful consideration of the materials placed before this Court and further taking into consideration the surrounding facts and circumstances of the case and the statement of accused Rajveer Singh, this Court is of the prima facie view that the alleged contraband ganja were not seized from the exclusive and conscious possession of the petitioners, who are only drivers of two vehicles hired for the purpose of illegal trafficking, therefore, the bar under Section 37 of the N.D.P.S. Act would not be attracted so far as the present petitioners are concerned.

13. In such view of the matter, this Court is inclined to release the petitioners on bail and it is directed that let the petitioners be released on bail by furnishing a bail bond of Rs.50,000/- (rupees fifty thousand) each with two local solvent sureties each for the like amount to the satisfaction of the learned court in seisin over the matter. Further, release of the petitioners shall also be subject to such terms and

conditions as would be fixed by the learned court in seisin over the matter.

14. However, learned court below while releasing the petitioners on bail shall verify whether the petitioners have any other criminal antecedents of similar nature in their names. In the event it is found that the petitioners have any criminal antecedents, then this bail order shall not be given effect to.

15. Violation of any of the terms and conditions shall entail cancellation of bail.

16. The Bail Application is accordingly disposed of.

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

(*A.K. Mohapatra*)
Judge

Jagabandhu

