

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.7633 of 2021

Udhab Mali

....

Petitioner

Mr. Asit Kumar Jena, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. K.K. Swain, ASC for State

CORAM:

JUSTICE A.K.MOHAPATRA

ORDER

10.03.2022

Order No.

03. 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. This is an application under Section 439 Cr.P.C. filed by the Petitioner for bail in connection with Mathili P.S. Case No.125 of 2021, corresponding to Spl. G.R. Case No.76 of 2021, pending in the file of learned Sessions Judge-cum-Special Judge, Malkanagiri, for commission of alleged offences under Sections 20(b)(ii)(C)/27-A of N.D.P.S. Act.
3. Heard learned counsel for both the parties. Perused the Case Diary, FIR and statement of witnesses.
4. Learned counsel for the Petitioner submits Petitioner is languishing in jail custody since the date of his arrest, i.e. 24.08.2021. It is submitted that police after completion of investigation has filed Charge-Sheet. It is further submitted that Petitioner was not present at the spot. However, one Krushna Katia, who was apprehended by the police along with contraband articles,

has subsequently named the present Petitioner in the alleged offence. Accordingly, the present Petitioner has been apprehended by the police. Learned counsel for the Petitioner further submits that the contraband articles were not recovered from the exclusive possession of the Petitioner, therefore, Section 37 of the NDPS Act is not attracted to the case of the Petitioner. It is also stated that as Petitioner is a local inhabitant, there is no chance of absconding the process of law.

5. Learned counsel for the State vehemently objects the prayer for bail of the Petitioner. It is stated that a quantity of 150 kgs. of contraband Ganja were recovered from one Krishna Katia and others. He further submits that no leniency should be shown in view of the fact that such type of offences are increasing day by day in the State. However, he submits in the event of release, stringent conditions may be imposed on the Petitioner.

6. The settled position of law is that the statement made by the co-accused persons under the NDPS Act cannot be evidence against another co-accused person, as decided in the case of ***Tofan Singh vs The State of Tamil Nadu***, reported in ***(2013) 16 SCC 31***. Further Petitioner was initially not named in the FIR and subsequently he has been entangled in the case. Therefore, the allegations made against the Petitioner can be asserted during trial of the case.

7. Having regard to the facts and circumstances of the case, considering the nature and gravity of offences alleged and the period of detention of the Petitioner, this Court is inclined to release the Petitioner on bail on furnishing a bail bond of Rs.50,000/- (Rupees Fifty thousand) with two local sureties for the like amount to the

satisfaction of the learned court in seisin of the matter subject to the following conditions :

i) He shall not involve himself in any similar nature of offence particularly involving the offence under the NDPS Act;

(ii) He shall appear before the trial court on each and every date as fixed by the court;

(iii) He shall appear before the I.O. on every Sunday at 10 A.M. to 1.00 P.M. and report to the police;

(iv) He shall not tamper with the prosecution evidence;

(v) He shall not influence or threaten any prosecution witness and cooperate in the investigation;

(vi) He shall provide his present address and mobile number to the I.O. and if any changes therein shall also be intimated to the I.O.;

(vii) He shall not leave the jurisdiction of the court without special permission from the court; and

(viii) Violation of any of the above conditions shall entail cancellation of the bail.

8. It is further directed that the court in seisin of the matter to verify the criminal antecedents of the Petitioner and impose any additional condition(s), if situation so warrants. This order shall remain valid in the event the court in seisin of the matter is satisfied that Petitioner has no criminal antecedents.

9. With the above direction, the BLAPL is accordingly allowed.

// 4 //

10. Issue urgent certified copy of this order on proper application.

(A.K. Mohapatra)
Judge

U.K.Sahoo

