

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.8945 of 2022

Hitesh Gohel

....

Petitioner

Mr. U. Barik, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. P.K. Maharaj, ASC

CORAM: JUSTICE V. NARASINGH

ORDER

19.12.2022

Order No.

04.

1. Heard learned counsel for the Petitioner and learned counsel for the State.
2. The Petitioner is an accused in 2(a)CC Case No.10 of 2022 (NDPS) pending on the file of learned Sessions Judge-cum-Special Judge, Kalahandi, Bhawanipatna, arising out of P.R No.48 of 2022-23, for commission of the offence alleged under Section 20(b)(ii)(C) of the N.D.P.S Act.
3. Being aggrieved by the rejection of his application for bail U/s.439 Cr.P.C. by the learned Special Judge, Kalahandi, Bhawanipatna by order dated 08.09.2022 in the aforementioned case, the present BLAPL has been filed.
4. It is submitted by the learned counsel that the Petitioner is in custody since 07.08.2022 and final P.R. has been filed on 06.08.2022, which is taken on record, on the allegation that the Petitioner was possessing contraband ganja to the tune of 20 Kg. 250 grams.

5. It is stated that the seizure was from a public place and there are no materials on record to indicate that the Petitioner had conscious exclusive possession. It is further submitted that wrong weighment cannot be ruled out so as to attract the bar contained in Section 37 of the N.D.P.S Act.

6. Learned counsel for the State opposes the prayer, inter alia, relying on Section 37 of the N.D.P.S Act since contraband is admittedly beyond the commercial quantity.

7. Taking into account the manner in which the seizure has been effected, this Court directs the Petitioner to be released on bail on such terms to be fixed by the learned court in seisin over the matter.

8. To allay the apprehension of the learned Public Prosecutor regarding ensure the presence of the Petitioner during trial as he does not belong to the State of Odisha, additionally it is directed that one of the family members of the Petitioner shall execute the P.R bond in addition to the sureties in terms of the order of the learned Court in seisin and his criminal antecedent from Malavia Police Station in the district of Rajkot, Gujarat shall also be obtained.

9. If it has come to the fore that the Petitioner has criminal antecedent, since he admittedly does not belong to the territorial jurisdiction of the learned Court in seisin, 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

PKS