

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.8005 of 2021

Bapuni Digal @ Bapi

....

Petitioner

Ms. Sujata Jena, Advocate

-versus-

State of Odisha

....

Opposite Party

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

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

24.02.2022

Order No.

06.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner and learned counsel for the State. Perused the F.I.R., case diary and other relevant documents as well as statement of the witnesses.
3. This is an application under Section 439 of the Criminal Procedure Code.
4. The Petitioner is an accused in C.T. Case No.15 of 2021 arising out of Balliguda P.S. Case No.45 of 2021 pending in the court of learned Special Judge-cum-A.D.J., Balliguda for commission of offence punishable under Sections 20(b)(ii)(C)/25/29 of the N.D.P.S. Act.
5. The brief fact of the case is that on 05.03.2021 S.I. of Balliguda P.S. lodged an F.I.R. stating therein that on getting information from the reliable sources that two persons are carrying contraband ganja packets on the backside dicky of a Auto Rickshaw bearing Registration No.OD-07-D-4663 from village Borikia towards village Jakikia and a person of Borikia village is also escorting the Auto Rickshaw in the red colour TVS Scotty bearing Registration No.OD-12-C-4315. The OIC sent information to the SDPO, Balliguda and S.P., Kandhamal. Then he was directed by the

superior officer to proceed to the spot immediately to verify the authenticity of the information. In fact, he found an Auto rickshaw and a TVS Scotty coming from the opposite site and on seeing the police vehicle, the person who was ridding the Scotty tried to flee away from the spot. As there was prior information, they checked the Scotty and stopped him. Likewise on seeing the police party, the Auto Rickshaw was stopped and the two persons came out of the Auto and could manage to run away from the spot. Thereafter, the police searched the vehicle and found two large size Jari bags on the back side of the Auto Rickshaw. On being asked the person who ridding the TVS Scotty confessed before the police about the Auto Rickshaw was loaded with ganja and it was carried by the present petitioner and one Kartik Digal sons of Kamra Digal and the ganja was being carried by the Petitioner two his house Jakikia.

6. It is submitted by learned counsel for the Petitioner that the Petitioner is in custody since 27.07.2021 and investigation of the case has been completed and charge-sheet in the case has been submitted. She further submits that the Petitioner is an innocent and he has been falsely implicated in this case. Therefore, she further submits that the Petitioner was not arrested from the spot and basing on the statement of the co-accused, he has been implicated in this case and arrested subsequently. Further, she submits that nothing has been recovered from the exclusive possession of the Petitioner. Therefore bar under Section 37 of the N.D.P.S. Act is not attracted to the facts of the case. Therefore, learned counsel for the Petitioner prays for release of the Petitioner on bail. She also submits that the Petitioner does not have any criminal antecedents of similar nature. Moreover, she submits that there is no scope for absconding or fleeing from the hands of the justice.

7. Mr. Mohanty, leaned Additional Standing Counsel for the State vehemently opposes the prayer for bail of the Petitioner and submits that illegal trafficking of contraband articles is rising day-by day and no leniency should be shown to the Petitioner or similarly situated persons.

He further submits that although the petitioner was arrested on the basis of the co-accused statement, there is enough evidence to establish against the Petitioner in the alleged offence. Therefore, he should be released on bail.

8. Having heard learned counsel for the parties, considering the period of custodial detention of the Petitioner and the fact that Section 37 of the N.D.P.S. Act is not attracted, it is directed that let the Petitioner be released on bail on furnishing a bail bond of Rs.50,000/- (rupees fifty thousand) with one local solvent surety 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 not make any default in attending the court during trial on each date without fail and shall appear before the concerned Police Station once in a week preferably on 'Sunday' in between 10.00 A.M. to 1.00 P.M. till conclusion of trial. Violation of any of the terms and conditions shall entail cancellation of bail.

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

10. 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 of similar nature. In the event it is found that the Petitioner has any criminal antecedents, this bail order shall automatically stand revoked.

11. The Bail Application is accordingly disposed of.

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