

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.12036 of 2022

Mrutunjaya Kumar @ Mrutunjaya Kumar Singh ***Petitioner***

Mr. Sk. Zafarulla, Advocate

-versus-

State of Odisha ***Opposite Party***

Mr. S. Mishra, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

23.09.2022

Order No.

01. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the petitioner and learned Additional Standing Counsel for the State.
3. This is an application under Section 438, Cr.P.C. filed by the petitioner for anticipatory bail.
4. The petitioner is seeking pre-arrest bail in connection with Special Case(NDPS) No.73 of 2017, arising out of Manamunda P.S. Case No.73 of 2017 pending in the court of learned Additional Sessions Judge, Kantamal for commission of offences punishable under Sections 20(b)(ii)(C)/29 of the N.D.P.S. Act.
5. It is submitted by learned counsel for the petitioner that the petitioner is owner of the vehicle and he has been falsely implicated in the present case. It is further submitted by learned counsel for the petitioner that two persons, namely, Arjuna Singh and Bhima @ Dhananjay Singh were arrested and the present petitioner was not

present at the spot. It is also submitted that the petitioner is no way involved in the alleged crime.

6. Further, it is submitted by learned counsel for the petitioner that the aforesaid Bhima @ Dhananjay Singh faced trial and he has been acquitted by the learned Additional Sessions Judge, Kantamal in Special Case(NDPS) No.59 of 2017 vide judgment dated 02.07.2022 with the following:-

“Prosecution case in brief is as follows;

On 21.04.2017 at about 7.40 p.m. the then IIC of Manamunda P.S., Umakanta Pradhan received information from his source about transportation of contraband Ganja in a 12-wheeler Truck bearing registration No.UP65-ET-0266 towards Manamunda from Kantamal side. To save delay, he decided to intercept the vehicle at Kapasira Chhak without search warrant. Accordingly, he entered the information in police station diary book vide SDE No.14 dtd. 21.04.2017, informed the same to S.P. and SDPO, Boudh over phone as well as through VHF message No.1076 dtd.21.04.2017 appending there with the extract of station diary entry. Then he formed a raiding team consisting of S.I., P. Garnaik, ASI Pandaba Jena, ASI Kasinath Majhi, OASI Ramakanta Pradhan, home guard Khirod Bhoi and proceeded to the spot in police station vehicle being driven by home guard driver Samaru Sethi. While proceeding to spot, IIC Umakanta Pradhan carried stationaries such as his personal laptop, printer and battery with him.

He also took two persons namely Birbal Malik and Narayana Ku. Nayak of village Khadalapada to the spot as witnesses. They reached at the spot i.e. Kapasira Chhak at 8.10 p.m. and the 12-wheeler Truck bearing registration No.UP-65 ET-0266 arrived there. IIC Umakanta Pradhan along with his team detained the vehicle with much difficulties and found the same to have been loaded with polythene packets suspecting contraband Ganja. Two occupants were there in the Truck. The driver disclosed his name as Arjuna Singh and another occupant disclosed his name as Bhim @ Dhananjay Ku. Singh, both of village Harpurchandi of Bihar. On verification Umakanta Pradhan found 13 numbers of polythene packets inside the driver's cabin as well as on the space above the cabin with suspected Ganja. On being asked, the driver and the occupant confessed that they are transporting Ganja from Kandhamal to Bihar in conspiracy with one Rahul @ Swadhin Khatua. Then IIC Umakanta Pradhan served notice to the accused persons u/s. 50 of NDPS Act to exercise their option for being searched either in presence of an Executive Magistrate or Gazetted Officer to which the accused persons opted to be searched in presence of Gazetted Officer. Then he sent a letter to S.P., Boudh to depute Gazetted Officer to the spot. He also sent ASI Pandaba Jena to bring one weighman along with weighment instrument and other sealing and stitching materials. At 9.25 p.m. Anupama James, SDPO,

Boudh arrived at the spot. The staff present there, the witnesses and the weighman gave their personal search before the Gazetted Officer and nothing incriminating was found from them. Then the occupants of the vehicle gave their personal search. On search of accused Bhima @ Dhananjay Kumar Singh a Samsung mobile phone bearing IMEI No.354915080811319, 354916080811317 and having SIM No.8294172400, 9135318545 and cash of Rs.10,350/- only along with a Canara Bank cheque vide Sl. No.062086 worth of Rs.25,000/- were recovered. Similarly on search of accused Arjun Singh one mobile phone bearing IMEI No.354958056263305, 354959056263303, his DL vide no.39918/2013(CG) and DL No.Jh-09/2001/0051052, his Aadhar card no.650692576817, SBI ATM Card No.4591510082902532, PAN Card EQYPS8331C and DFTPS 9182E, registration certificate of the vehicle having Regd. No.UP-65-ET0266, Engine No.B591803251L63481615, Chasis No.MAT466420F1N28005 in the name of Mrityunjay Kumar, fitness certificate of UP-65ET-0266, Insurance certificate of UP-65ET-0266 vide policy no.3379/01321839/000/01 were recovered. Then all the polythene packets were unloaded over a tarpaulin and on opening of the packets the same were found to have contained dry, processed, flowering and fruiting tops of cannabis plants. The IIC Umakanta Pradhan ascertained the same as Ganja from its color, texture,

smell and service experience. The bags were of different weight. On weightment of the 13 numbers of packets all total 2 quintals 62 kg. of Ganja was recovered, after weight measurement IIC Umakanta Pradhan prepared separate weightment slip and drew up two samples each containing 50 gms. from each bulk gunny bag and kept those samples in sealed polythene packets separately. He marked the bulk Ganja packets as 'A', 'B', 'C', 'D', 'E', 'F', 'G', 'H', 'J', 'K', 'L', 'M' AND 'N' and then samples collected there from as A/1, A/2, B/1, B/2, C/1, C/2, D1, D/2, E1, E/2, F1, F/2, G1, G/2, H/1, H/2, J/1, J/2, K/1, K/2, L1, L/2, M1, M/2 and N1, N/2. Then he put all the cut wrapping materials of the bags in one bag and marked the same as "p". He prepared the specimen signature slips containing his signature with brass seal impression as well as the signature of the witnesses, weighman, Gazetted Officer and accused persons. He kept the slips inside the respective sample packets. Then he wrapped all the bulk Ganja packets with cotton and kept the sample packets inside envelopes. All the packets were leveled and sealed with his brass seal impression. Then he seized all the recovered articles along with the vehicle and electronic weighing instrument. Then he left the weighing instrument and brass seal in zima of weighjman Sujan Kumar Meher. On return to police station, he lodged a written report, registered Manamunda P.S. case no.73 dtd.22.04.2017 for the offences u/s 20(b)(ii)(C)/29 of NDPS Act and

directed S.I. Bishnu Prasad Gouda to take up investigation. During course of investigation, the I.O. arrested the accused persons namely Arjuna Singh and Bhima @ Dhananjaya Singh and produced them in court along with the seized articles. He dispatched the samples vide A1 to N1 for chemical examination through court, seized the messages sent by informant to S.P. Office, Boudh, verified the ownership of the offending vehicle and ascertained that the same stands recorded in the name of Mrityunjay Kumar Singh of Bihar. After getting clue, arrested Swadhin Khatua as a conspirator of the offence. He also examined other witnesses and received the chemical examination report. He took steps to arrest the owner of the vehicle but failed in it. Then after completion of investigation, he submitted charge sheet against the accused persons namely Arjuna Singh, Bhima @ Dhananjay Singh, Swadhin Kumar Khatua and Mrityunjay Kumar Singh u/s-20(b)(ii)(C)/25/29 of NDPS Act showing accused Mrityunjaya Kumar Singh as an absconder.

At the stage of argument, accused Arjuna Singh defaulted, in his appearance after his release on interim bail for which NBW was issued and the case against him was split up. Now this judgment is confined to accused Bhima @ Dhananjay Singh and Swadhin Kumar Khatua.”

7. Learned counsel for the State, on the other hand, submits that the petitioner belongs to Uttar Pradesh and there is possibility might

not to cooperate with the trial and accordingly, opposes the bail application of the petitioner and his bail application should be rejected.

8. Having heard learned counsel for the respective parties and upon careful consideration of the materials placed before this Court as well as the nature of allegation, gravity of offence and the fact of the case, I am not inclined to grant anticipatory bail to the petitioner. However, it is directed that in the event the petitioner surrenders and moves an application for bail before the learned court in seisin over the matter within a period of three weeks from today in the aforesaid case, he shall be released on bail on such terms and conditions as would be deemed just and proper subject to condition that he shall furnish cash security of Rs.30,000/- (rupees thirty thousand) with further conditions that besides other conditions would be imposed by the learned court below while releasing the petitioner on bail with further conditions that :-

- I. The petitioner shall not be involved in any offence of similar nature;
- II. he shall not tamper with the prosecution evidence or try to threaten or influence the witnesses in any manner whatsoever;
- III. he shall not make any default in attending the court during trial;
- IV. he shall appear before the concerned Police Station once in a month preferably on 'Sunday' in between 10.00 A.M. to 1.00 P.M. till conclusion of trial; and

V. he shall not leave the jurisdiction of the Court in seisin over the matter and shall furnish his address and mobile number to the police from time to time.

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

9. Accordingly, the ABLAPL is disposed of.

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

Jagabandhu

