

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.8325 of 2021

Bhima Khilo

.... ***Petitioner***
M/s.R.N.Biswal, Advocate

-versus-

State of Orissa

.... ***Opp. Party***
Mr.S.R.Roul, A.S.C

CORAM:

JUSTICE G. SATAPATHY

ORDER

27.09.2022

Order No.

10. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. This is an application U/S. 439 of the Cr.P.C. by the Petitioner for grant of bail in connection with Semiliguda P.S. Case No. 42 of 2020 corresponding to T.R. Case No.25 of 2020 pending in the Court of learned Addl. District & Sessions Judge-cum-Special Judge, Koraput for commission of offence punishable U/Ss. 20(b)(ii)(C) and 29 of NDPS Act on the allegation of assisting in transportation of 1640 Kgs. of contraband Ganja in six wheeler tanker.
3. In the course of hearing of the bail application, learned counsel for the petitioner submits that the petitioner was neither present at the spot nor was in possession of contraband Ganja, but he has been implicated in this case solely on the basis of confession of co-accused. It is further submitted that co-accused standing on similar footing has already been granted bail by the Court in BLAPL No. 7790/2021 and the petitioner, therefore, may kindly be enlarged on bail.
4. On contrary, learned counsel for the State while opposing the bail application of the petitioner vehemently submits that the petitioner is a habitual offender having seven cases similar nature to his credit. Learned counsel for the State under these submissions prays to reject the bail application of the petitioner by producing the case diary to evidence the

criminal antecedents of the petitioner.

At this point of time, learned counsel for the petitioner by way of reply submits that merely pendency of some cases under N.D.P.S. Act for offences involving commercial quantity cannot be taken into consideration to deny bail to the petitioner, especially when no case is made out against the petitioner in this case.

5. After having considered the rival submissions advanced for the parties upon perusal of the record, it appears that the petitioner has been remanded in this case for commission of offences punishable U/S. 20(b)(ii)(C) and 29 of NDPS Act, which prescribe punishment for production, manufacturing, possession, sale, purchase, transportation, import and export of inter-State and use of cannabis involving commercial quantity and punishment for abetment and criminal conspiracy to commit an offence punishable under the Act. Besides, grant or refusal of bail to the persons accused of offences under the N.D.P.S. Act is to be guided by the provisions of Section-37 of the Act, which is extracted below:-

37. Offences to be cognizable and non-bailable-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) every offence punishable under this Act shall be cognizable;

*(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27-A and also for offences involving commercial quantity **shall** be released on bail or on his own bond unless;*

(i) the Public prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

*(2) The limitations on granting of bail specified in clause (b) of sub-section (1) **are in addition to the limitations under the Code of Criminal procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.***

In this case, the petitioner is alleged to have committed an offence involving commercial quantity, but the case diary produced by the learned counsel for the State discloses the following cases registered against the petitioner:-

- (i) Semiliguda P.S. Case No. 9 dated 17.01.2014 U/S 20(b)(ii)(C) NDPS Act, 1985.
- (ii) Semiliguda P.S. Case No. 88 dated 31.10.2020 U/S 20(b)(ii)(C) NDPS Act, 1985.
- (iii) Semiliguda P.S. Case No. 17 dated 04.03.2014 U/Ss 147/148/506/323/149 of I.P.C.
- (iv) Jeypore Sadar P.S. Case No. 03 dated 05.01.2021 U/S 20(b)(ii)(C) NDPS Act, 1985.
- (v) Semiliguda P.S. Case No. 02 dated 03.01.2021 U/S 20(b)(ii)(C)/29 of NDPS Act, 1985.
- (vi) Semiliguda P.S. Case No. 42 dated 22.05.2020 U/S 20(b)(ii)(C) of NDPS Act, 1985.
- (vii) Semiliguda P.S. Case No. 88 dated 31.10.2020 U/S 20(b)(ii)(C) of NDPS Act, 1985.

6. However, the pendency of cases against the petitioner has never been seriously disputed by the learned counsel appearing for the petitioner, but the pendency of above cases by itself are the good and reasonable reasons for dissuading this Court to record any satisfaction U/S. 37(b)(ii) of the N.D.P.S. Act for grant bail to the petitioner. It is no doubt advanced for grant of bail to the petitioner by extending the principle of parity on the ground of release of co-accused on bail, but in view of law laid down in ***State of Kerala Vrs. Rajesh and another; (2020)78 OCR (SC) 65***, parity cannot be extended to the petitioner in absence of reference to Section 37 of the N.D.P.S. Act in the order granting bail to co-accused. Further, the point/ground for implication of petitioner solely on the basis of confession of co-accused as advanced for the petitioner for his release on bail needs further scrutiny of the entire materials on record, which was never placed before this Court.

7. In view of the above discussions and facts and keeping in view the mandate of Section 37(b)(ii) of the N.D.P.S. Act and the registration of long list of cases against the petitioner under N.D.P.S. Act for offences involving commercial quantity and taking into consideration the seizure of huge quantity of contraband Ganja to the tune of 1640 Kgs. and the law laid down in the ***State of Kerala Vrs. Rajesh and another; (2020)78 OCR (SC) 65*** and ***Narcotics Control Bureau Vrs. Mohit Agarwal; 2022 SCC Online SC 891***, this Court considers it improper to grant bail to the

petitioner. Accordingly, the prayer for bail of the petitioner stands rejected.

8. In view of the rival submissions, the trial in this case be expedited and it is open for the petitioner to renew his prayer for bail after examination of official witness, who has placed the remand report to take the petitioner into custody in this case.

09. Accordingly, the BLAPL stands disposed of.

10. Urgent certified copy of the order be granted on proper application.

Kishore

*(G. Satapathy)
Judge*

