

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.8392 of 2021

Siba Roula @ Shiba Roula

.... Petitioner
Mr. S.K. Dash, Advocate

-versus-

State of Odisha

.... Opposite Party
Mr. K.K. Nayak, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER
10.03.2022

Order No.

02.

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 G.R. Case No.40 of 2021(N) arising out of Digapahandi P.S. Case No.201 of 2021 pending in the court of learned Sessions Judge-cum-Special Judge, Ganjam for commission of offence punishable under Sections 20(b)(ii)(C/29 of the N.D.P.S. Act.
5. The case of the prosecution, in short, is that on 06.08.2021 at about 10.00 A.M. the S.I. of Police Digapahandi with other staff while performing day patrolling duty as per direction of IIC at village Digapahandi, Padmanavapur, Chakatentuli, Padabadi, Dherendi, Nimakhandi village areas, received reliable source that about 4 to 5

persons were transporting contraband ganja by a white and faded blue colour tractor being Registration No.OD-07-C-5430 on Gumabhismagiri road and proceeding towards Chakatentuli over the trolley. On receipt of such information, the informant immediately informed the matter to the IIC over phone, who directed them to proceed to the spot for verification on the authenticity and veracity of the information. On seeing the police party, four persons including the driver managed to escape from the spot towards Dherendi jungle but we chased them and managed to apprehend one person along with tractor being Registration No.OD-07-C-5430 with unnumbered trolley, where loaded with some contraband articles by covering a tarpaulin and the acute smell of ganja is coming out from the loaded articles. On interrogation, the apprehend person disclosed his identity as Siba Roula and he further sated that the escaping persons names are Dhanial Mandal, Binod Paik, Susanta Mallick and Enu Sahu all are belong to Mohana Police Station area under Gajapati district and he further disclosed that they were transporting the contraband ganja by procuring the same from remote village area of Gajapati district of selling purpose in Digapahandi area on higher profit. Prior to the search of the tractor trolley personal search of accused person required to be done as per Section 50 of the N.D.P.S. Act. Hence, the informant served notice under Section 50 of the N.D.P.S. Act to the suspect Siba Raula in Odia language, asking whether he wanted to be searched in presence of any Gazetted Officer of Revenue Department-cum-Executive Magistrate or Police Officer. On reply, the accused replied to be searched in presence of any Gazetted Officer of the Revenue Department-cum-Executive Magistrate. So, the informant immediately informed the matter over phone. Gazetted Officer present at the spot. The weigh man weighed the ganja in nine number of bags. The total net weight of the contraband ganja became 231 Kgs. 600 grams. It is further sated that

after completing all the formalities, the informant arrested the Petitioner.

6. It is submitted by learned counsel for the Petitioner that the Petitioner is in custody since 07.08.2021 and investigation of the case has been completed and charge-sheet has been submitted. He further submits that the petitioner is a lame man, who was a gratuitous passenger and he had no knowledge about the contraband articles were carried in the said vehicle. Further he submits that on seeing the police party, other persons, who were sitting on the trolley including the driver managed to escape from the spot and the petitioner is a lame man and he has no knowledge of contraband articles were loaded in the said trolley. He also submits that there is no scope for absconding or fleeing from the hands of the justice and that the Petitioner is a local man. Further he also submits that the Petitioner does not have any criminal antecedents of similar nature and Section 37 of the N.D.P.S. is not attracted.

7. Mr. Nayak, 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 and that the petitioner who was sitting on the trolley of the tractor and prays for rejection for bail application of the Petitioner.

8. Having heard learned counsel for the parties, keeping in view the fact that the petitioner is physically challenged person, who was traveling with the tractor and there is possibility of his innocence can be rolled out at this stage and the period of custodial detention of the Petitioner, 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 each for the like amount to the satisfaction of the learned court in seisin over the matter subject to the following

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 on each date without fail; and
 - IV. he 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.

(A.K. Mohapatra)
Judge