

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.8540 of 2021

Mohan Khilla @ Khillo

....

Petitioner

Mr. J.K. Panda, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. Manoj Kumar Mohanty, ASC for State

CORAM:

JUSTICE A.K.MOHAPATRA

ORDER

21.03.2022

Order No.

02. 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. This is an application under Section 439 Cr.P.C. filed by the Petitioner for bail in connection with Chitrakonda P.S. Case No.107 of 2021, corresponding to G.R. Case No.81 of 2021, pending in the file of learned Sessions Judge-cum-Special Judge, Malkangiri, for commission of alleged offences under Sections 20(b)(ii)(C) of N.D.P.S. Act.
3. Heard learned counsel for both the parties. Perused the FIR, Case Diary and statement of witnesses.
4. The case of the prosecution, in brief, is that on 20.08.2021 at about 1.00 P.M. while the police staff patrolling duty Gunthaawada area at about 12.15 A.M., the police officer received reliable information regarding illegal transportation of contraband ganja near village Kankripoda through a tractor, on

such information the police officer along with other staff have proceeded to the spot for ascertainment of facts. But about 12.30 A.M. near the spot, they have detained four suspected persons along with three numbers of motor cycles, those were one blue black colour Apache RTR motorcycle having Regd. No.OD-30A-7752 one black and blue colour Hero Glamour motor cycle without registration number and one blue colour Yamaha motorcycle bearing Regd. No. OD-10G-1605, one red colour Mahindra Yuyo 4751 tractor bearing Regd. No.OD-30-D-0083 fitted with, one red colour Mahindra Yuyo. It is alleged that the present Petitioner coming from Iaji pally to NH-16 fitted with trolley were detained by the OIC. By seeking the police office accused persons became nervous and when OIC had asked he about the contents kept in Jari packets of the tractor covered with tarpaulin from which smell of ganja was coming, the accused persons disclosed their names and address. It was found net weight comes to 752Kg 250 gms.

5. Learned counsel for the Petitioner submits Petitioner is languishing in jail custody since the date of his arrest, i.e. 20.08.2021 and that the investigation has been completed in the meantime and charge-sheet has been submitted by the police. It is further submitted by learned counsel for the Petitioner that while the Petitioner was going on the road, he was intercepted by the police. It is stated that the contraband articles (ganja) was seized from the tractor. Therefore, it cannot be said that ganja was recovered from the conscious possession of the Petitioner

and hence Section 37 of the NDPS is not attracted to the case of the Petitioner. It is further submitted that Petitioner has no criminal antecedents of similar nature.

6. Learned counsel for the State vehemently objects the prayer for bail of the Petitioner. It is submitted that now-a-days case of illegal trafficking of contraband articles are increasing day by day, therefore, no leniency should be shown to the present Petitioner, who involved in such crime. Accordingly, he prays for rejection of his bail application.

7. Having regard to the facts and circumstances of the case, considering the nature and gravity of offences alleged and the period of detention of the Petitioner, this Court is inclined to release the Petitioner on bail on furnishing a bail bond of Rs.50,000/- (Rupees Fifty thousand) with one local surety for the like amount to the satisfaction of the learned court in seisin of the matter subject to the following conditions :

- i) He shall not involve himself in any similar nature of offence particularly involving the offence under the NDPS Act;
- (ii) He shall appear before the trial court on each and every date as fixed by the court;
- (iii) He shall appear before the I.O. on every Sunday at 10 A.M. to 1.00 P.M. and report to the police, till conclusion of trial;
- (iv) He shall not tamper with the prosecution evidence;

(v) He shall not influence or threaten any prosecution witness and cooperate in the investigation;

(vi) He shall provide his present address and mobile number to the I.O. and if any changes therein shall also be intimated to the I.O.;

(vii) He shall not leave the jurisdiction of the court without special permission from the court; and

(viii) Violation of any of the above conditions shall entail cancellation of the bail.

8. It is further directed that the court in seisin of the matter to verify the criminal antecedents of the Petitioner and impose any additional condition(s), if situation so warrants. This order shall remain valid in the event the court in seisin of the matter is satisfied that Petitioner has no criminal antecedents.

9. With the above direction, the BLAPL is accordingly allowed.

10. Issue urgent certified copy of this order on proper application.

(A.K. Mohapatra)
Judge