

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.8645 of 2021

Santosh Kumar Khatei

....

Petitioner

Ms. Pratyusa Naidu, Advocate

-versus-

State of Odisha

....

Opposite Party

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

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

22.06.2022

Order No.

08.

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.13 of 2021(N) arising out of Berhampur Sadar P.S. Case No.85 of 2021 pending in the court of learned District & Sessions Judge, Berhampur for commission of offence punishable under Sections 20(b)(ii)(C)/25 of the N.D.P.S. Act.
5. The prosecution case, in brief, is that on 25.03.2021 at about

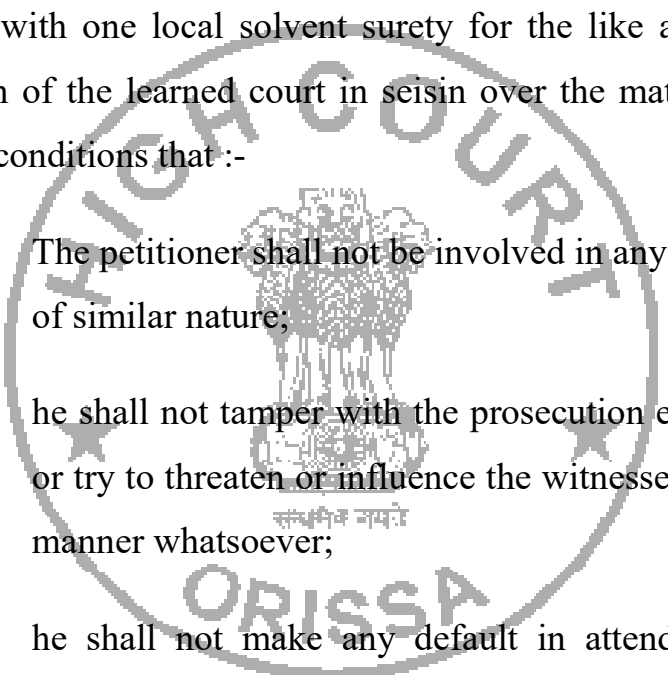
3.10 P.M. while the informant along with his other police staffs were performing patrolling duty at Hanuman Statue, Badabandha of village-Masohakhali noticed three persons along with driver riding in an Auto-rickshaw bearing registration No.OD-07-L5988 was coming from village Masihakhali side towards Berhampur, which signaled them and stopped them on the road, they became nervous and jury top escape. On search of said Auto-rickshaw the informant found three numbers of gunny bags which are containing 82 Kgs 80 grams contraband articles. Hence this case.

6. It is submitted by learned counsel for the petitioner that the petitioner is a passenger of the seized Auto-rickshaw and he had no knowledge about the contraband articles were on the said vehicle and that he is in custody since 25.03.2021 and investigation of the case has been completed and charge-sheet has been submitted by the police. He further submits that the petitioner does not have any criminal antecedent of similar nature. 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. Learned counsel for the petitioner submits that on similar footing with the petitioner, another co-accused has already been released on bail by this Court in BLAPL No.4243 of 2021 by order dated 06.05.2022.

7. Further, learned counsel for the petitioner submits that on seeing the police party, the principal accused, namely, Bharat Behera fled away from the spot and the present petitioner was sitting inside the autorickshaw as a passenger and he had knowledge about the contraband ganja was loaded with the said vehicle. It is also submits that Section 37 of the N.D.P.S. Act is not attracted against the petitioner.

8. Learned 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.

9. Having heard learned counsel for the parties and considering the period of custodial detention of the petitioner and section 37 of the NDPS 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 following conditions that :-

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- 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.

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

11. 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.

12. The Bail Application is accordingly disposed of.

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

Jagabandhu

