

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**BLAPL No.8719 of 2021**

***Haroon***

.... ***Petitioner***  
*Mr. A.P. Bose, Advocate*

*-versus-*

***State of Odisha***

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

**CORAM:**

**JUSTICE A.K. MOHAPATRA**

**Order No.**

**ORDER**  
**25.04.2022**

05. 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. Perused the case diary, F.I.R., charge-sheet and the statement of the witnesses.
3. The present bail application has been field by the Petitioner under Section 439, Cr.P.C to release the Petitioner on bail, who is in custody in connection with Similiguda P.S. Case No.85 of 2019 corresponding to T.R. Case No.22 of 2019, pending in the court of learned Additional Sessions Judge-cum-Special Judge, Koraput for commission of offences under Section 20(b)(ii)(C) of the N.D.P.S. Act.
4. The bail application filed by the Petitioner before the learned Sessions Judge-cum-Special Judge, Malkangiri, which was rejected by order dated 27.08.2021.
5. The prosecution story, in nutshell, is that one Bhagaban Mishra, now working as a Sub-inspector of Police in Similiguda P.S

is that on dated 17.09.2019, he along with other staff performing duty on Nandapur Similiguda (MDR 55) they coming from Nandapur side and crossed their vehicle in very high speed. They chased and could able to stop at Pattangi Chowk. On verification, they know that some jerry bags were loaded on the gap between the two tarpaulin used for covering the dala in concealed manner from which acute smell of ganja coming out. On being asked both the detainees disclosed their name as (1) Ashok Kumar (2) Kuldip Singh. During their interrogation, they disclose that Haroon and Sahu Babu Kumudi were managed to escape from the spot after observing all the formalities of search and seizure as enshrined in NDPS Act, they recovered and seized 378 Kgs. 400 grams of ganja from the said vehicle. Hence this case.

6. Mr. Bose, learned counsel for the Petitioner submits that the Petitioner has been implicated in this case on the basis of the statement of the co-accused. He further submits that the police has submitted charge-sheet in the case after concluded the investigation. Learned counsel for the Petitioner further submits that the Petitioner was neither arrested from the spot nor any contraband ganja was seized from the exclusive and conscious possession of the Petitioner. As such, no case under the NDPS is made out against the Petitioner. He further submits that in view of the judgment delivered by the Hon'ble Supreme Court of India in the case of ***Tofan Singh vrs. State of Tamilnadu*** : reported in (2021) 4 SCC1 and order dated 10.01.2022 in the matter of ***State By (NCB) Bengaluru vrs. Pallulabid Ahmad Arimuta and another (Special Leave to Appeal (Criminal) No.242 of 2022)***. The statement made by the co-accused under Section 67 of the N.D.P.S. Act is not admissible in evidence.

7. In such view of the matter, learned counsel for the Petitioner

prays that the Petitioner may be released on bail. Learned counsel for the Petitioner further contended that the procedure has laid down in Sections 42 and 50 of the N.D.P.S. Act have not been followed in the present case against the petitioner. The Petitioner cannot be held guilty of offence alleged against him.

8. Mr. Nayak, learned counsel for the State, on the other hand, opposes the prayer for bail of the petitioner on the ground that the contraband articles involved in the present case is more than commercial quantity and he further submits that the co-accused have named the present petitioner and that the Petitioner was managed to escape from the spot while search and seizure was conducting, as such, he could not be apprehend at the spot. However, basing upon the statement of the co-accused, he was arrested later on. Mr. Nayak, further submits that a clear case is made out against the Petitioner and the provisions as N.D.P.S. Act. He further submits that the trafficking of contraband substances are on the rise in the Koraput district of the State of Odisha. He also submits that the petitioner is an outsider. Therefore, no leniency should be shown to the Petitioner.

9. Having heard learned counsel for the parties, considering the period of detention of the Petitioner in custody and the fact that the investigation has been completed and charge-sheet has been filed in the meantime and further the fact that the Petitioner has been apprehended on the basis of the statement made by the co-accused, this Court is inclined to release the Petitioner on bail.

10. Let the Petitioner be released on bail subject to furnishing a bail bond of Rs.1,00,000/-(Rupees one lakh) with two solvent local sureties for the like amount to the satisfaction of the court in seisin over the matter. However, this order is subject to the following

conditions:-

- 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;
- IV. he shall appear before the concerned Police Station once in a fortnight 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.

11. The Bail Application is accordingly disposed of.

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

**( A.K. Mohapatra )**  
**Judge**