

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.8755 of 2021

Ajit Kumar Digal

....

Petitioner

Mr. R.N. Rout, Advocate

-versus-

State of Odisha

....

Opposite Party

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

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

22.06.2022

Order No.

05.

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 2(a) CC Case No.38 of 2021(N) arising out of P.R. No.92 of 2021-22 pending in the court of learned Sessions Judge-cum-Special Judge, Ganjam for commission of offence punishable under Sections 20(b)(ii)(C) of the N.D.P.S. Act.
5. The brief fact of the case as per P.R., in a nutshell, is that the Inspector of Excise EI & EB (SD), Unit-II, Berhampur found the

petitioner carrying two jerry bags. On suspicion the petitioner was detained and fifty kilos of contraband ganja was seized from the bags.

6. It is submitted by the learned counsel for the petitioner that the petitioner is languishing in custody since 12.06.2021 and the petitioner has been falsely implicated in the present case. It is further submitted by the learned counsel for the petitioner that the alleged contraband articles were seized on a crowded place at the market besides National High Way where the petitioner was standing and that the petitioner had no knowledge the contraband articles were seized from the possession of the petitioner. It is also submitted that the required mandatory provision under Section 50 of the N.D.P.S. Act has not been complied with in the present case.

7. Further, learned counsel for the petitioner submits that there is no chance of absconding or fleeing from receiving justice and in the event of his release, he will appear before the trial court on each date of posting of the case and shall abide by the terms and conditions that may be imposed by this Court. 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 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, considering the surrounding circumstances of the case and the period of custodial detention of the petitioner, required mandatory provision has not be complied with and further recovery of contraband articles is doubtful as per Section 37 of the N.D.P.S. Act is not attracted and the fact that

contraband articles have not been seized from the conscious and exclusive possession of the petitioner, I am inclined to grant bail to the petitioner and it is directed that let the petitioner be released on bail in the aforesaid case on furnishing a bail bond of Rs.50,000/- (rupees fifty thousand) with two local solvent sureties each for the like amount to the satisfaction of the learned court in seisin over the matter subject to the following terms and 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;
- IV. he shall appear before the concerned Police Station once in a month preferably on 'Sunday' in between 10.00 A.M. to 1.00 P.M. till conclusion of trial; and

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 any 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. It is made clear that if the petitioner fail to attend the court on the date fixed on a single occasion, this order shall stand automatically revoked and the learned court below is at liberty to issue N.B.W. against the petitioners forthwith.

13. The Bail Application is accordingly disposed of.

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

(*A.K. Mohapatra*)
Judge

Jagabandhu

