

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.13184 of 2022

Gobinda Khila

....

Petitioner

Mr. Asit Kumar Jena, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. Sitikant Mishra, A.S.C.

CORAM:

JUSTICE A.K.MOHAPATRA

ORDER

14.10.2022

Order No.

01. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner and learned Addl. Standing Counsel for the State.
3. This is an application under Section 438, Cr.P.C. filed by the Petitioner for anticipatory bail, involving offence punishable under Sections 20(b)(ii)(C) of the N.D.P.S. Act.
4. It is submitted by learned counsel for the Petitioner that the Petitioner was not arrested from the spot and no contraband article was seized or recovered from his conscious and exclusive possession. He further submits that the Petitioner has been implicated in this case on the basis of co-accused statement. He further submits that in view of the decision of the Hon'ble Supreme Court, the statement of the co-accused under Section 67 of the Act is not admissible in evidence.

5. Considering such submission, seriousness of the allegation, gravity of the offence and facts and circumstances of the case, although I am not inclined to grant anticipatory bail to the Petitioner, however it is observed that the Petitioner may surrender and move for bail before the learned Sessions Judge-cum-Special Judge, Malkangiri in T.R. Case No.178 of 2020 corresponding to Chitrakonda P.S. Case No.160 of 2020 within a period of three weeks from today. In the event the Petitioner surrenders and moves for bail within the aforesaid stipulated period, learned Sessions Judge-cum-Special Judge, Malkangiri shall do well to dispose of the bail application of the Petitioner on the same day on merit in accordance with law and further keeping in view the fact that the Petitioner was not present at the spot, from where the seizure was made. Further, while considering the bail application of the Petitioner, the learned court in seisin over the matter shall also consider the law laid down by the Hon'ble Supreme Court of India in ***Tofan Singh vs. State of Tamilnadu*** : reported in (2021) 4 SCC 1 and order dated 10.01.2022 in the matter of ***State by (NCB) Bengaluru Vs. Pallulabid Ahmad Arimuta and another (Special Leave to Appeal (Criminal) No.242 of 2022)***.

The Case Diary be made available to the concerned court in order to facilitate in disposal of the bail application of the petitioner on the same day itself.

Ground of parity, if canvassed by the learned counsel for the Petitioner, shall also be taken into consideration by the learned Sessions Judge-cum-Special Judge, Malkangiri, while considering the bail application of the Petitioner.

6. The ABLAPL is disposed of accordingly.
7. Urgent certified copy of this order be granted as per rules.

(A.K. Mohapatra)
Judge

S.K.Parida

