

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.9008 OF 2021

Akhaya Kumar Swain

....

Petitioner

Mr.U.K. Barik, Advocate

-versus-

State of Odisha

....

Opposite Party

Miss. A. Rath, ASC

CORAM:

MR. JUSTICE D.DASH

Order No.

02.

Order

24.02.2022

1. The matter is taken up through hybrid arrangement (virtual/ physical) mode.
2. This is the second journey of the Petitioner, who is in custody in connection with Jeypore Sadar P.S. Case No.102 of 2021 corresponding to T.R. Case No.41 of 2021 on the file of learned Sessions Judge-cum-Special Judge, Koraput-Jeypore running for alleged commission of offence under section 20 (b)(ii)(c) of the NDPS Act, in filing this application under section 439 Cr.P.C., has prayed for his release on bail.
3. Learned counsel for the Petitioner submits that as per the prosecution case, which stands as against the Petitioner, only upon the statement of the co-accused said to have been recorded under section 67 of the NDPS Act that the Petitioner had given 50 kgs of ganja in a bag for being loaded in the truck for its transportation. He further submits that the prosecution case is also to the effect that several persons in this way had brought some quantity of ganja for being loaded in the truck for transportation. It is submitted at the time of seizure, this petitioner was not present nor his presence was secured shortly after the seizure and he has been

arrested after about six days of the incident. It is further submitted that this Petitioner has no criminal antecedent and the investigation of the case being complete, charge sheet has been submitted when there remains no scope on the part of the Petitioner to flee from justice and tamper the evidence. It is submitted that two persons, who were near the truck loaded with the contraband have been arrested and are now in custody. In view of all these above, he urges for reconsideration of the prayer for grant of bail to the Petitioner as according to him, in the facts and circumstances of the case, the bar contained under section 37 of the NDPS Act would not stand on the way.

Learned counsel for the State opposes the move. It is submitted that in view of the statement of the co-accused recorded immediately after seizure at the spot, the involvement of the Petitioner prima facie can be well seen and that the possession of whole of the seized contraband has to be attributed to each.

4. Taking into account the submissions made; further keeping in view the materials on records as those stand against the Petitioner with other surrounding circumstances including the period of detention of the petitioner in custody, in the absence of any such impediment; while being inclined to reconsider the prayer for grant of bail to the Petitioner; it is directed that the petitioner be released on bail in the aforesaid case on such terms and conditions as deemed just and proper by the court in seisin of the case with further conditions that he shall not indulge himself in similar type of offence while on bail and shall appear before the Court below on each and every date of posting of the case till conclusion of the trial.

Violation of any of the above condition(s) shall entail cancellation of bail.

4. The BLAPL is accordingly disposed of.
Issue urgent certified copy as per rules.

**(D. Dash),
Judge.**

Basu

