

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.13486 of 2022

Stiphan Gamango

..... Petitioner
Mr. R.N. Biswal, Advocate

-versus-

State of Odisha

..... Opp. Party
Mr. M.K. Mohanty, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

20.10.2022

Order No.

01. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the petitioner and learned Additional Standing Counsel for the State.
3. This is an application under Section 438, Cr.P.C. filed by the petitioner for anticipatory bail.
4. The petitioner is seeking pre-arrest bail in connection with G.R. Case No.33 of 2021, arising out of Mahana P.S. Case No.32 of 2021 pending in the court of learned Special Judge-cum-District and Sessions Judge, Gajapati, Paralakhemundi for commission of offences punishable under Sections 25/29/20(b)(ii)(C) of the N.D.P.S. Act.
5. It is submitted by learned counsel for the petitioner that on similar footing with the present petitioner, another co-accused has already been released on bail. It is further submitted by learned counsel for the petitioner that on the basis of the statement of the co-accused, the petitioner has been falsely implicated in the present

case.

6. Further, it is submitted by the learned counsel for the petitioner that the petitioner is an innocent person having no nexus with the alleged commission of offence and no prima facie case is made out against the petitioner to rope him in the present case. It is also submitted by the learned counsel for the petitioner that the petitioner has not been named in the FIR and also he was not present at the spot. It is stated that on the basis of the statement of the co-accused, the petitioner has been implicated in the present case. The allegations made in the FIR are omnibus in nature. It is further contended by learned counsel for the petitioner that no contraband article was seized from the exclusive and conscious possession of the present petitioner. Since the petitioner is a permanent resident of his village, there is no chance of his absconding. Lastly, learned counsel for the petitioner submits that the entire prosecution case is false, baseless and concocted and has been foisted with mala fide intention. The petitioner undertakes not to temper with the prosecution evidence not to make any attempt to threaten the witnesses, in the event he is released on anticipatory bail. Further, learned counsel for the petitioner relies on 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 SCCI 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)*.

7. Learned Additional Standing Counsel on the other hand opposes the prayer for anticipatory bail of the petitioner and submits that a clear case is made out against the petitioner under the N.D.P.S.

Act. He further submits that the trafficking of contraband substances are on the rising in the State of Odisha. Therefore, no leniency should be shown to the petitioner.

8. Considering the nature of allegations and gravity of offence and the fact of the case and the fact that the petitioner has been implicated in this case under the provision of N.D.P.S. Act, I am not inclined to grant anticipatory bail to the petitioner. However, it is observed that, in the event the petitioner surrenders before the learned court in seisin over the matter within three weeks from today. The Court in seisin over the matter shall consider the same and dispose of the bail application of the petitioner on the very same day. Keeping in view 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 SCCI*** 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)***. Further, it is directed that the Case Diary shall be made available to the concerned court to facilitate disposal of the bail application of the petitioner. On such event, the higher forum shall consider and dispose of the bail application of the petitioner on the same day strictly on the basis of the materials on record by maintaining the principles of parity, if applicable.

9. Accordingly, the ABLAPL is disposed of.

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

(A.K. Mohapatra)
Judge

