

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 10404 of 2022

Rajib Jani

....

Petitioner

Mr. A. Das, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. A. Pradhan, ASC

CORAM: JUSTICE V. NARASINGH

ORDER
14.12.2022

Order No.

02.

1. Heard learned counsel for the petitioner and learned counsel for the State.

2. The petitioner is an accused in connection with T.R. Case No.50/75 of 2022, pending before the learned Special Judge -cum- Sessions Judge, Nayagarh, arising out of Itamati P.S. Case No.2 of 2022, for alleged commission of offences under Section 20(b)(ii)(C) of NDPS Act.

3. Being aggrieved by the rejection of his application for bail U/s.439 Cr.P.C. by the learned Special Judge, Nayagarh, by order dated 04.02.2022 in the aforementioned case, the present BLAPL has been filed.

4. It is submitted by the learned counsel that the petitioner is in custody since 03.01.2022 and charge-sheet has been filed on 24.06.2022.

5. It is submitted that independent seizures from two vehicles i.e. one Toyota Itios Car bearing No.OD-02-BV-2166 (30.400gms) and one Swift Dezire Car bearing registration No.OD-15-A-7070

(28.200gms) have been clubbed together and the petitioner who is the driver of the Toyota Etios Car, has been arrayed as an accused for possessing contraband to the tune of 58Kgs 600gms (Ganja). Hence, it is stated that the petitioner can only be made liable for the seizure from the Toyota Etios Car to the tune of 30Kg 400gms and since he was driving the vehicle to earn livelihood, conscious exclusive possession cannot be attributed so as to attract the bar under Section 37 of the NDPS Act and as the petitioner is the first offender, he may be released on bail as charge-sheet has already been filed.

6. Learned counsel for the State opposes the prayer for bail and submits that even if the plea of independent seizures being clubbed together are accepted at its face value, taking into account that the seizure from the Toyota Etios Car, which is admittedly being driven by the petitioner, is more than the commercial quantity, in view of the bar contained under Section 37 of NDPS Act, he ought not to be released on bail.

7. Considering that the petitioner was the driver of the vehicle in question as stated, this Court directs the petitioner to be released on bail on such terms to be fixed by the learned Court in seisin.

8. While releasing the petitioner on bail, the learned Court below shall verify assertion regarding criminal antecedent of similar nature. If it comes to the fore that the petitioner has such criminal antecedent, this order shall stand recalled.

9. Accordingly, the BLAPL stands disposed of.

10. Urgent certified copy of this order be granted as per rule.

(V. NARASINGH)
Judge