

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.13716 of 2022

***Eliya Rait @ Eliyo Raito &
another***

.... Petitioners
Mr. D. Sahoo Advocate

-versus-

State of Odisha

.... Opp. Party
Mr. M.K Mohanty, ASC.

**CORAM:
JUSTICE CHITTARANJAN DASH**

**ORDER
28.11.2022**

Order No.

02.

1. Heard learned counsel for the Petitioners and learned counsel for the State.
2. By means of this application the Petitioners seek grant of application U/s. 438 Cr.P.C apprehending arrest for their alleged involvement in the offence U/s. 20(b)(ii)C/25/29 of the N.D.P.S Act in connection with Adava P.S Case No. 93 of 2021 corresponding to G.R Case No. 95 of 2021 pending on the files of the learned Special Judg., Gajapati.
3. It is alleged that on 02.09.2021 the S.I Police, Adava P.S, Dist. Gajapati along with the police staff while conducting patrolling duty in Birikote, Nalaghat and Mandimera Gram Panchayat areas received reliable information about Ganja being loaded near village Balibandha Chowk in a truck by the drug peddlers. Maintaining the

statutory formalities, the said S.I. proceeded to the place to ascertain the veracity of the informant and found a truck in ready to move position. The police personnel detained the truck and on verification found it's a Tata Truck bearing registration No. HR56B/9002 and one Hero H.F Delux Motor Cycle bearing Regd. No. OD20B/2486 and found four persons in the driver chamber and one person on the dala of the Truck. On further query they disclose their names and addresses who belong to the State of Haryana. They further disclosed that the Ganja was arranged from Chudungapur area for trafficking the same to Haryana. They detected fifteen numbers of plastic jerry bags from which ganja smell was emitting and on weighment found it contained 316 Kg 600 Grams of Ganja. On the basis of written report drawn to that effect by the S.I of Police the aforesaid case was registered and investigation commenced. While the position stood thus, the present Petitioners move for bail in apprehension of their arrest being the owners of the motor cycle and the Truck.

4. The learned counsel for the Petitioners submits that the present Petitioners were never been in the spot and they being the owners are not aware of the vehicles being used for the purpose of transportation of Ganja. Referring to the decision as mentioned in the body of the Petition the learned Counsel submitted to consider the prayer of the Petitioners for a pre arrest bail.

5. The learned counsel for the State on the other hand referred to the ABLAPL No. 4973 of 2022 and submitted that the earlier ABLAPL in rest to Sudhir has been dismissed. It is further submitted by the learned counsel for the State that the decision cited by the learned

counsel for the Petitioner stands in the facts and circumstances in a different footing and has no application in the present case.

6. Keeping in view the submissions of the parties, the order passed in ABLAPL No. 4973 of 2022 when this Court has declined to grant the anticipatory bail in respect to the Petitioner No.2 earlier being not brought to the notice of this Court by the learned counsel for the Petitioners makes it imperative for this Court to mention that absence of the certification on the part of the Petitioner No. 2 in respect to the earlier disposal of the ABLAPL declaring his prayer for grant of Anticipatory bail to have been declined is a clandestine approach and cannot be encouraged. As far as the decisions mentioned in the body of the Petition the factual scenario in the present case stands in different footing more so, when Section 37 of the NDPS Act comes on the way in the grant of bail to the Petitioners as its reveals detection of 316 KG 600 Grams of Ganja being transported in the vehicles of which the Petitioners claim to be the owners. The submissions of the learned counsel that the motor cycle was taken by the person for use for the purpose as detected was never in the knowledge of the Petitioner No.1. In the facts and circumstances, in absence of any material finds no substance as inherently the owners owes the responsibility of the manner of use of the vehicle irrespective of the person who uses it.

7. In view of the above discussions, the nature of allegations as emerged from the materials on record, the circumstances appearing, the seriousness and gravity of the offences, this court is not inclined to grant anticipatory bail to the Petitioners. Accordingly the prayer for bail stands rejected and the ABLAPL is dismissed.

8. The ABLAPL is dismissed.

(Chittaranjan Dash)
Judge

B.K Sahoo

