

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.13725 of 2022

Chagala @ Baidyanath Bahalia ***Petitioner***
Mr. Arada Jena, Advocate

-versus-

State of Odisha ***Opp. Party***
Mr. Debasis Biswal, A.S.C.

CORAM:
JUSTICE CHITTARANJAN DASH

Order No.

ORDER
09.11.2022

- 02.
1. Heard the learned counsel for the Petitioner and the State.
 2. By means of this application, the Petitioner seeks pre-arrest protection under Section 438, Cr.P.C. for his alleged involvement in the offence under Sections 21(A) & 29(1) of the N.D.P.S. Act, in connection with Badachana P.S. Case No.287 of 2022 corresponding to C.T. NDPS Case No.20 of 2022 pending in the Court of learned Special Court, Jajpur.
 3. The prosecution story, as per the F.I.R, is that the complainant Subash Chandra Mudulli, S.I. of Police, Badachana P.S., while performing patrolling duty along with other police staff of the P.S. on 03.10.2022 at about 2 P.M. near Chandikhole chowk, suddenly detected two persons in a motorcycle interacting with two other persons in a suspicious manner. On seeing the police party, all the four suspected accused persons tried to flee away from the spot, but

only one of them could manage to escape, while other three persons were nabbed by the police party. On being asked, those three persons gave some evasive reply to the police, however on search, total 119 plastic sachets ('pudia') containing Brown Sugar of 3 gms & 780 mgs. net quantity were found and seized from one of them namely Gagan Bihari Khilar @ Lipu, and he also disclosed that another person namely Chagala (the present Petitioner) fled away from the spot. The other two persons disclosed their identity as Sk. Chand and Sk. Salamuddin and revealed that they were indulged in sale and purchase of contraband Brown Sugar in 'pudia' packing form and they had come to the spot to sell them. On further interrogation, they revealed that they all are indulged together in this joint venture business of sale and purchase of Brown Sugar in order to gain easy earnings and they also revealed that one Chagala of village Pakhar (the Petitioner) has sponsored the fund for purchasing the Brown Sugar, who was present with them at the spot but managed to escape.

4. It is submitted by learned counsel for the Petitioner that the allegation made against the Petitioner is false, fabricated and afterthought. The present Petitioner has been arrayed as an accused only on the basis of the statement of the co-accused persons. He further submits that the present Petitioner was not present at the spot nor any contraband article was seized from him and as such be considered for bail.

5. Learned counsel for the State on the other hand vehemently objected the prayer for bail of the Petitioner on the ground that the

Petitioner was transporting contraband articles, and this type of illegal trafficking of contraband articles are increasing day by day in the State and further submitted that no leniency should be shown to the Petitioner, who is involved in such a heinous crime and prays for rejection of the bail of the Petitioner in the interest of the public and the society at large.

6. Keeping in view the submission of the parties and having gone through the nature of allegations as emerged from the material on record and further the circumstances appearing, the seriousness and gravity of the offences, this Court is not inclined to grant anticipatory bail to the Petitioner. However, if the Petitioner so desires and surrenders before the learned court in seisin over the matter, the learned court concerned shall consider the bail application of the Petitioner independent of the observation made herein and shall deal with the same on its own merit strictly on the basis of the materials available on record and shall do well to dispose of the bail application on the same day, if there is no other legal impediment.

7. The ABLAPL is disposed of.

(Chittaranjan Dash)
Judge

S.K. Parida