

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.13906 of 2022

Bipin Bihari Swain

....

Petitioners

Mr. Rabindra Nath Panda, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. Debasish Biswal, A.S.C.

CORAM:

JUSTICE CHITTARANJAN DASH

ORDER

14.11.2022

Order No.

02.

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

2. By means of this application under Section 438, Cr.P.C., the Petitioner seeks for bail in anticipation of arrest for his alleged involvement in the offence under Sections 309/411/34, I.P.C. in connection with Dhamra P.S. Case No.89 of 2022 corresponding to G.R. Case No.570 of 2022 pending in the file of learned J.M.F.C., Chandbali.

3. It is alleged that, in the intervening night of 17th / 18th July, 2022 while the police personnel from Bhadrak Rural P.S. were performing night patrolling duty in Dhamara P.S. area, early in the morning at about 4.30 A.M. they received a reliable information regarding transporting of stolen coal being carried in a Pick-Up Van. They intercepted that vehicle bearing Registration No. OD 05 AY 5439 while the same was proceeding from Guanlo towards Kaithakola. Seeing the police patrolling vehicle, the driver of the Pick-Up Van stopped the vehicle at a distance and three persons

including the driver fled away from the spot, keeping the ignition in start position. The police personnel detected coal in bags being transported. On the basis of the report drawn by Constable No. C/66, the case was registered and investigation commenced.

4. The present Petitioner being the owner of the said Pick-Up Van, apprehending his arrest in connection with the alleged incident, moved in the present.

5. It is submitted by learned counsel for the Petitioner that the vehicle in question was leased out in favour of one Rabindra Kumar Sahu at the time of the alleged incident and the Petitioner was not looking after the management of that vehicle and as such he has no connection whatsoever in the alleged incident and therefore he may be considered for the pre-arrest bail.

6. Learned counsel for the State on the other hand vehemently opposed the bail application contending that mere preparation of a Lease Deed of the vehicle does not absolve the Petitioner from the liability of becoming the owner of the said vehicle. As such, no leniency is to be shown to the Petitioner in granting bail.

7. It is indeed true that, agreement for lease of the vehicle purported to have been executed between the Petitioner and one Rabindra Kumar Sahu on 21.06.2022 that receives attestation of the Notary Public does not create the right of ownership in favour of the said Rabindra Kumar Sahu. This is because the agreement would no way divest the Petitioner as to the right of ownership of the vehicle, i.e the Pick-Up Van in question. Consequently, the fact that on the

alleged date of occurrence the Petitioner was the owner of the vehicle remains undisputed.

8. Coming to the fact that the vehicle was involved in carrying / transporting coal without any authority has to be taken prima facie stolen material and further, in absence of any person nabbed at the spot also goes to the owner the vicarious liability. Consequently, the Petitioner has to take the responsibility of the use of the vehicle at the relevant time.

9. In the above background, keeping in view the seriousness and gravity of the offence and the circumstances of the vehicle being intercepted, it is not desirable for this Court to grant anticipatory bail in favour of the Petitioner. However, if the Petitioner so chooses and surrenders before the court below in seisin over the matter, within two weeks hence, the court concerned shall consider his application in the first hour and in case that court pleases to reject the bail of the Petitioner, then the Petitioner may move before the higher forum in the second hour of the day. In both the occasion, the learned courts below shall dispose of the bail application of the Petitioner on its own merit, strictly on the basis of the materials available on record, independent of the observation made in this order, and shall dispose of on the same day, if there be no other legal impediment. The Case Diary be made available before the concerned courts to enable the courts concerned for disposal of the bail application.

(Chittaranjan Dash)
Judge