

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 8779 of 2020

Akash Kumbhar

....

Petitioner

Mr. S.K. Acharya, Advocate

-versus-

State of Odisha

....

Opposite Party

Ms. S. Mishra, ASC

CORAM: JUSTICE V. NARASINGH

ORDER
21.03.2022

Order No.

06.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned State counsel.
3. The petitioner is an accused in SPL. G.R. Case No.56 of 2020, on the files of learned Court of ADJ-cum-Special Judge, Padampur, Baragarh, arising out of Sohela P.S. Case No.161 of 2020, under Sections 21(c)/25/29 of NDPS Act read with Section 120(B)/274/275 of IPC and is in custody since 15.10.2020.
4. Being aggrieved by the rejection of his application for bail U/s.439 Cr.P.C. by order dated 16.10.2020 by the learned

Additional Sessions Judge in the aforesaid case, the present BLAPL has been filed.

5. The petitioner is the owner of Pick-up vehicle bearing Registration No.-OD-15Q-9033. It is admitted case that the vehicle was used for transport of 13200 bottles of Cough Syrup and 7 empty strips of Nitrosun 10 tablets and a jerrycan containing 20 litres, of light red color liquid. The allegation that the Cough Syrup was being mixed with Nitrosun tablets and transported which is in violation of the NDPS Act and such mixture is beyond the permissible limit as prescribed under the NDPS ACT.

6. It is stated by the learned counsel for the petitioner that petitioner is the owner of the vehicle and relying on the statement of one Mr. Manoranjan Mohanty, it is submitted that he has only taken stock of the goods send through SAFEXPRESS Pvt. Ltd. Courier Service from Majhipali, Sambalpur to Saintala in Bolangir. The consigner is one AAR PHARMACY, Gwalior and the consignee is one M/s. Priya Medical Store, Saintala.

7. Hence it is asserted that it cannot be said that the present petitioner is in conscious possession of the goods which are stated to be allegedly beyond the permissible limit under the NDPS Act.

8. Learned counsel for the petitioner relies on the order of this Court dated 08.12.2021 in BLAPL No.8777 of 2020 of

co-accused, one Guru Mirdha and submits that the petitioner ought to be released on bail on the ground of parity.

9. Per contra, the learned counsel for the state relying on the very statement of Mr. M. Mohanty who is area manager of SAFEXPRESS Pvt. Ltd. Courier submits that there is no plausible explanation given regarding 20 litres of red liquid being carried in jerrycan. He also referred to the rejection of the BLAPL of one Shankar Dev Seth @ Deepak, by this Court dated 08.09.2021, who is a representative of the consignee and urges that since the petitioner is the owner and being present in the vehicle he has to be held responsible for the materials more particularly the 20 litres of red liquid, which is carried in the vehicle, in-tra state and which is not part of the consignment received in Odisha.

10. It is submitted by the learned counsel for the State that the petitioner cannot be said to be similarly circumstanced with Guru Mirdha whose bail application was favourably considered. And accordingly seeks rejection of the present BLAPL in view of the bar under Section 37 of the NDPS Act.

11. On considering the materials on record and since despite repeated adjournments C.E report is not made available to this Court it is not possible to come to a definite finding regarding the nature of liquid that was found in the vehicle during its intra state transportation and therefore, this Court considers that the allegation of conscious possession in terms of

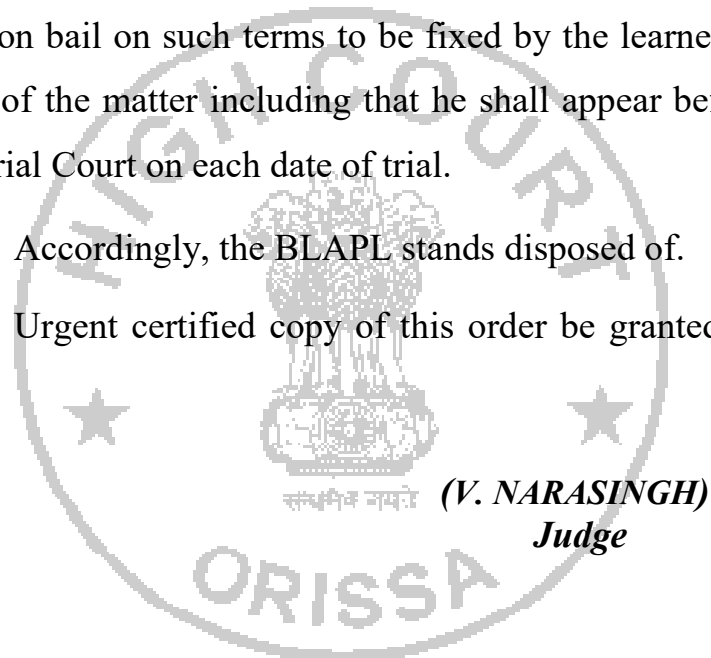
NDPS Act, cannot be attributed to the petitioner who is the owner of the vehicle.

12. Since charge sheet is filed further continuance of the petitioner is not justified in the case at hand and the submission of the learned counsel for the State, that the release of the petitioner at this stage will adversely affect the impending trial does not appear to be cogent.

13. Hence it is directed that the petitioner shall be released on bail on such terms to be fixed by the learned Court in seisin of the matter including that he shall appear before the learned trial Court on each date of trial.

14. Accordingly, the BLAPL stands disposed of.

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



(V. NARASINGH)
Judge

Santoshi