

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.9536 of 2021

Nilanchal Sethi

....

Petitioner

Mr. A.R. Panda, Advocate

-Versus-

State of Odisha

....

Opposite Party

Mr. S.N. Das, Additional Standing Counsel

CORAM:

MR. JUSTICE R.K. PATTANAIK

ORDER

10.01.2022

Order
No.

01. 1. This matter is taken up through video conferencing mode.
2. Heard learned counsel for the petitioner and learned counsel for the State.
3. This is an application under Section 439 of Cr.P.C for grant of bail to the petitioner in connection with Baghamari P.S. Case No.83 of 2021 registered under Section 20 (b)(ii) (C) of NDPS Act corresponding to T.R. Case No.143 of 2021 pending in the file of learned 1st Additional Sessions Judge-cum-Special Judge, Under NDPS Act, Khurda.
4. Perused the FIR and also impugned order dated 11.10.2021 as at Annexure-2.
5. Gone through the contents of the FIR.
6. Learned counsel for the petitioner submits that 20.540 kgs of ganja is alleged to have been recovered from the possession of the accused, who at the relevant point of time was the driver of the auto-rickshaw, wherein, three other occupants were travelling while

being intercepted by the local police and considering the period detention, which is since 05.10.2021 and the fact that he is having no criminal antecedent, petitioner should be enlarged on bail with any conditions which is objected to by the State on the ground that it is a commercial quantity of ganja which has been allegedly recovered from the accused persons.

7. In fact, on perusal of the FIR, it is made to suggest that the contraband ganja was kept in two polythene bags, one containing 8.100 kgs and another 12.600 kgs, is obviously more than the commercial quantity, which is stated to have been recovered from the alleged auto-rickshaw. It is also revealed that the petitioner to be the driver of the vehicle in question and three others were travelling at the relevant point of time, one of whom said to have been arrested and presently in judicial custody. The learned counsel for the State clarifies that one of the occupants of the auto-rickshaw happens to be wife of the petitioner and two were outsiders. In any case, recovery is shown from the auto-rickshaw which is being driven by the petitioner having two others occupants. It is made to reveal that two plastic polythene bags were kept in the backside of the seat of the vehicle. It is drawn to the attention of the Court that the petitioner does not have any previous criminal track record which means he is claimed to be a first time offender. The learned counsel for the State submits that Section 37 of NDPS Act stands as a bar since because commercial quantity of contraband substance is said to have seized.

8. Having regard to the submissions made and taking into account and the fact that alleged recovery is shown from an auto-rickshaw, of course, which was being driven by the petitioner by then with two other occupants travelling at the relevant point of time, when the local police intercepted it and recording the

submission of the learned counsel for the petitioner that the accused is having no previous criminal antecedent and considering the fact that substantial part of the investigation appears to be over, the Court is of the considered view that the accused, who is in custody since the date of arrest, should be released on bail with stringent conditions which are as follows.

9. In the result, the petitioner is allowed to go on bail on furnishing a bail bond of Rs.40,000/-(rupees forty thousand) with one solvent surety for the like amount to the satisfaction of the learned court below in seisin over the matter with conditions, such as, he shall not involve himself in any such similar kinds of criminal activities, while on bail; and shall attend the PS and report the IIC concerned once in a fortnight preferably on Sunday between 10 AM to 1 PM for the purpose of investigation till it is concluded.

10. The BLAPL is disposed of.

11. The above order of bail shall not be given effect, in the event, the learned court below on verification finds presence of any criminal antecedent of similar nature vis-à-vis the petitioner.

12. As the restrictions due to the COVID-19 situation are continuing, learned counsel for the parties may utilize a soft copy of this order available in the High Court's website or print out thereof at par with certified copy in the manner prescribed, vide Court's Notice No.4587, dated 25 March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022

(R.K. Pattanaik)
Judge

