

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.9600 of 2021

Gupta Pangi

....

Petitioner

*Mr. Prasanta Kumar Sahoo,
Advocate*

-versus-

State of Odisha

....

Opp. Party

*Mr. A.K. Beura,
Addl. Standing Counsel*

BLAPL No.9601 of 2021

Vickey @ Vicky Biswas

....

Petitioner

*Mr. Prasanta Kumar Sahoo,
Advocate*

-versus-

State of Odisha

....

Opp. Party

*संयुक्त न्याये
Mr. A.K. Beura,
Addl. Standing Counsel*

CORAM:

JUSTICE S.K. SAHOO

ORDER

25.02.2022

Order No.

01. Both the bail applications are taken up through Hybrid arrangement (video conferencing/physical mode).

Since both the bail applications arise out of one

case i.e. T.R. Case No.06 of 2020 pending in the Court of learned Additional Sessions Judge, Umerkote, Nabarangpur, with the consent of the learned counsel for the respective parties, both the cases are heard analogously and disposed of by this common order.

Heard Mr. Prasanta Kumar Sahoo, learned counsel appearing for the petitioners and Mr. A.K. Beura, learned Additional Standing Counsel for the State of Odisha in both the bail applications.

Both the bail applications under section 439 of Cr.P.C. are in connection with Umerkote P.S. Case No.18 of 2020 corresponding to T.R. Case No.06 of 2020 pending in the Court of learned Additional Sessions Judge, Umerkote, Nabarangpur for offence punishable under section 20(b)(i) of the N.D.P.S. Act.

The petitioners moved an application for bail before the Court of learned Additional Sessions Judge, Umerkote, which was rejected on 18.08.2021.

The bail application of petitioner Gupta Singh was earlier disposed of by this Court in BLAPL

No.2428 of 2020 as per order dated 11.01.2021 giving liberty to the petitioner to renew the prayer for bail before the learned trial Court and the earlier bail application of the petitioner Vickey @ Vicky Biswal was also disposed of on the same ground.

Learned counsel for the petitioners submitted that in the meantime, one of the co-accused, namely, Pankaj Majumdar has been directed to be released on bail by this Court in BLAPL No.7167 of 2021 as per order dated 08.10.2021 and since the petitioners are similarly situated, the bail application of the petitioners may be favourably reconsidered. He placed reliance on the decision on a bail order passed in the case of **Bikash Duria -Vrs.- State of Odisha reported in 2020 (III) I.L.R. -CUT- 165** relating to grant of bail to an accused where a co-accused has been granted bail of similar offence on the basis of doctrine of parity.

Learned counsel for the State opposed the prayer for bail and contended that while granting bail

to the said co-accused Pankaj Majumdar, the Court has not given any finding on the bar under section 37 of the N.D.P.S. Act, which was very much necessary.

Since it is a case in which commercial quantity of ganja was seized from the possession of the two petitioners so also the co-accused Pankaj Majumdar.

As per the prosecution case, two unknown persons with a loaded gunny bag containing suspicious articles moved towards the house of co-accused Pankaj Majumdar of village Burja and the said co-accused was awaiting for those two persons and immediately received the gunny bag from them and at the time of shifting of the gunny bag, all the accused persons were caught hold by the informant and other police officials and those three persons disclosed their names. Two of them are the two petitioners in these two bail applications and one of them the co-accused Pankaj Majumdar, who has been granted bail. The quantity of contraband ganja was 22.200 kg. after excluding the weight of the carry gunny bag. Thus,

there is no dispute that such quantity comes within 'commercial quantity'.

On perusal of the bail order of the co-accused Pankaj Majumdar, it seems that though the Court noted down the contentions of the learned counsel for the petitioner that bar under section 37 of the N.D.P.S. Act would not be applicable but in the operative portion of the order, while discussing the reasons for grant of bail, there is no finding on such submission as to whether the bar under section 37 of the N.D.P.S. Act is applicable or not.

Section 37 of the N.D.P.S. Act opens with a non-obstante clause. Non-obstante clause must be given its due importance. The powers of the High Court to grant bail under section 439 Cr.P.C. are subject to the limitations contained in section 37 of the N.D.P.S. Act. Once the Public Prosecutor opposes the application for bail to a person accused of the enumerated offences under section 37 of the N.D.P.S. Act, in case, the Court proposes to grant bail to such

a person, two mandatory conditions are required to be satisfied in addition to the normal requirements under the provisions of the Cr.P.C. or any other enactment. The Court must be satisfied that there are reasonable grounds for believing that the person is not guilty of such offence and that he is not likely to commit any offence while on bail. The satisfaction of the Court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail. The expression "reasonable grounds" used in section 37(1)(b)(ii) of the N.D.P.S. Act connotes substantial probable causes which in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of such satisfaction. Whether the grounds are reasonable or not depend on the circumstances in a given situation. The Court while dealing with an application for bail is not called upon to record a finding of 'not guilty' but to see if there are reasonable grounds for believing that the

accused is not guilty and records its satisfaction about the existence of such grounds. Additionally, the Court has to record a finding that while on bail, the accused is not likely to commit any offence and there should also exist some materials to come to such a conclusion. In case of **Union of India -Vrs.- Rattan Mallik @ Habul reported in (2009) 42 Orissa Criminal Reports (SC) 697**, where Union of India filed an appeal before the Supreme Court challenging the order of the Allahabad High Court in suspending the sentence awarded by the trial Court to the respondent/accused for having committed offences under sections 8/27-A and 8/29 of the N.D.P.S. Act and granting bail, considering the limitation imposed in sub-clause (b) of subsection (1) of section 37 of the N.D.P.S. Act, it was held that merely because, according to the learned Judge, nothing was found from the possession of the respondent, it could not be said at this stage that the respondent was not guilty of the offences for which he had been charged and

convicted. It was further held that it seems that the provisions of the N.D.P.S. Act and more particularly section 37 of the N.D.P.S. Act were not brought to the notice of the learned Judge. It was further held that the order passed by the High Court clearly violates the mandatory requirements of section 37 of the N.D.P.S. Act. The bail order was set aside with a liberty to decide afresh in the light of the limitation imposed.

Law is well settled that parity cannot be sole ground for grant of bail but it is one of the grounds for consideration of question of bail. A Judge is not bound to grant bail to an accused on the ground of parity even where the order granting bail to an identically placed co-accused contains no cogent reasons or if the same has been passed in flagrant violation of well settled principle of law and the Judge ignores to take into consideration the relevant facts essential for granting bail. Such an order can never form the basis of claim of parity. It will be open to the Judge to reject

the bail application of the applicant before him as no Judge is obliged to pass orders against his conscience merely to maintain consistency. The grant of bail is not a mechanical act.

Learned counsel for the petitioners has failed to satisfy this Court on the basis of factual position to conclude that the restrictions under section 37 of the N.D.P.S. Act are fulfilled to warrant grant of bail. There are prima facie materials available on record to show that these two petitioners were carrying commercial quantity of ganja and they came to the house of the co-accused Pankaj Majumdar and culpable mental state can be prima facie presumed under section 35 of the N.D.P.S. Act. Since no finding on mandatory provision under section 37 of the N.D.P.S. Act has been given while granting bail to co-accused Pankaj Majumdar, in view of the nature and gravity of the accusation against the petitioners and taking into account the commercial quantity of ganja seized in the case, the punishment prescribed for the

offence and the bar under section 37 of the N.D.P.S. Act, I am not inclined to reconsider the prayer for bail.

The learned trial Court shall do well to expedite the trial. The petitioner is at liberty to renew the prayer for bail after examination of the material witnesses.

Accordingly, both the bail applications stand dismissed.

Urgent certified copy of this order be granted on proper application.



RKM