

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.10815 of 2022

Swarnamala Senapati

....

Petitioner

Mr. S. Dash, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. K. K. Gaya, ASC

CORAM: JUSTICE V. NARASINGH

ORDER

07.12.2022

Order No.

02.

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

2. The Petitioner is an accused in 2(a)CC Case No.12 of 2022 (N) pending on the file of learned Addl. Sessions Judge-cum-Special Judge, Khallikote, arising out of P.R No.65 of 2022-23, for commission of the offence under Section 20(b)(ii)(C) of the N.D.P.S Act.

3. Being aggrieved by the rejection of her application for bail U/s.439 Cr.P.C. by the learned Special Judge, Khallikote by order dated 11.10.2022 in the aforementioned case, the present BLAPL has been filed.

4. It is submitted by the learned counsel that the Petitioner is in custody since 29.09.2022 for accusation of possessing the contraband (ganja) to the tune of 23 Kg. and as final P.R. has been filed on 05.11.2022, her further continuance in custody is

unwarranted keeping in view the manner in which the seizure has been effected from a public place.

5. It is submitted that admittedly the seizure having been made from a public place, conscious exclusive possession cannot be attributed to the Petitioner and as such rigors of Section 37 of the N.D.P.S Act are not attracted in the case at hand and also states that mandatory requirements under Section 50 of the N.D.P.S Act have not been followed in the case at hand.

6. Learned counsel for the State opposes the prayer, inter alia, on the ground of the bar contained in Section 37 of the N.D.P.S Act and submits that the plea of innocence relying on the manner of seizure and violation of the statutory provisions cannot be gone into at this stage.

7. Considering the submission of final P.R. and the manner of seizure and that the Petitioner is a lady, in the light of the provisions contained in the first proviso to Section 437(1), Cr.P.C, this Court directs the Petitioner to be released on bail on such terms to be fixed by the Court in seisin over the matter.

8. While releasing on bail, learned Court in seisin shall verify the criminal antecedent of similar nature. If the Petitioner has such criminal antecedent, this order shall stand recalled without further reference to the Bench.

9. Accordingly, the BLAPL stands disposed of.

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

(V. NARASINGH)
Judge

PKS