

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 10835 of 2022

Kameswar Behera

....

Petitioner

Mr. M. Das, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. Karunakar Gaya, ASC

CORAM: JUSTICE V. NARASINGH

ORDER

28.11.2022

Order No.

01.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned counsel for the State.
3. The petitioner is an accused in 2(a) CC No.10 of 2022, pending on the file of learned Additional Sessions Judge-cum-Special Judge, Bhanjanagar, arising out of EI & EB Unit II (SD), Berhampur P.R. Case No.546 of 2022-23, for commission of alleged offences under Section 20(b)(ii)(C) of NDPS Act and is in custody since 22.08.2022.
4. Being aggrieved by the rejection of his application for bail U/s.439 Cr.P.C. by the learned Additional Sessions Judge-cum-Special Judge, Bhanjanagar, Dist-Ganjam by order dated 07.09.2022 in the aforementioned case, the present BLAPL has been filed.

5. Learned counsel for the petitioner submits that the petitioner is in custody since 22.08.2022 for carrying contraband (ganja) to the tune of 40 kgs as a pillion rider of the motor cycle bearing registration no.OD-05Z-0471 (Hero Glamour).

6. Final P.R. (Form No.C-5) submitted on 18.11.2022 is taken on record.

7. It is stated that the petitioner is the victim of the circumstances, in as much as he had no knowledge that the bags were containing ganja for which on being detained by the Excise Officials, he did not run away.

8. Learned counsel for the State opposes the prayer for bail relying on the bar contained under Section 37 of the NDPS Act and it is submitted with vehemence that the defence as advanced cannot be taken into account at this stage when prima facie the seizure is more than the permissible limit.

9. Taking into account the conduct of the petitioner, this Court is of the prima facie view that conscious exclusive possession cannot be readily attributed to the petitioner and considering the manner of the seizure and that the petitioner is a local person, this Court directs the petitioner to be released on bail on such terms to be fixed by the learned Court in seisin over the matter so as to ensure his presence on each date of trial.

10. It is stated on instructions that the petitioner has no criminal antecedents. While enlarging the petitioner on bail the learned court below shall verify assertion regarding his criminal proclivity. If it comes to the fore that the petitioner has criminal

antecedent of any nature, this order shall stand recalled without any further reference to this Court.

11. Accordingly, the BLAPL stands disposed of.
12. Urgent certified copy of this order be granted as per the rules.

(V. NARASINGH)
Judge

Santoshi

