

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.14258 of 2022

Panchu Singh

....

Petitioner

Mr. Kalpataru Mishra, Advocate

-versus-

State of Odisha

....

Opp. Party

Mr. Manoj Kumar Mohanty, ASC.

CORAM:

JUSTICE CHITTARANJAN DASH

ORDER

14.11.2022

Order No.

- 01.
1. Heard learned counsel for the Petitioner and learned counsel for the State.
 2. This is an application for bail U/s.438 Cr.P.C. filed by the Petitioner in apprehension of arrest for his alleged involvement in the offences U/s. 279/34 of IPC and U/s.51 of the Odisha Minor Minerals Concessions Rules.
 3. It is alleged that on 26.10.2022 while the S.I of Police Sadar UPD, Cuttack along with police staffs were performing day patrolling duty, at about 11.30 A.M at Balikuda Chowk was received credible information that a Tractor engaged in lifting of sand and transportation the same from Kuakhai river belt under Pratapnagari Mouza. To ascertain the veracity of the information the police personnel rushed to the spot, on the way they procured two independents witnesses to witness the raid. At the spot they

found seven to eight labourers engaged in lifting the sand on the tractor. Seeing the police vehicle and staff, all the labourers ran away from the spot. The driver of the tractor also tried to escape but on chase he was nabbed along with the tractor bearing registration No. OD-05-AU 2878 loaded with sand. On being asked the driver disclosed his name and identity as Karitk Singh but could not produce any authority, license or permission to lift the sand and for its transportation from the river bed to the destination upon seizure of the material thereon so also, the dala of the tractor the driver Kartik Singh was brought to the Police Station and upon registration of the FIR and investigation commenced.

4. It is submitted by the learned counsel for the Petitioner that the present Petitioner being the owner of the vehicle is no way connected to the alleged incident and is not even aware of the fact that the tractor was engaged in lifting of sand, if any and in absence of any criminal antecedent of the similar nature the Petitioner may be considered for bail.

5. Learned counsel for the State on the contrary vehemently opposed the bail application and submitted that the Petitioner is the owner of the tractor wherein the alleged illegal lifting of sand and transporting was carried on cannot escape the rigor of law merely on the ground that he is not aware of the above said act of the driver engaged by him.

6. Needless to say that the Petitioner being the owner of the tractor in question was looking after the business conducted therein and the engagement of the driver for lifting of the sand and its transportation cannot be unilateral decision of the driver himself. Nothing also transpires from the ground propounded by the

Petitioner that he is not looking after the conduct of the business by engaging the tractor and has left to the discretion of the driver. On the contrary, the lifting of the sand illegally and unauthorizedly not only causes loss of the revenue to the state but also detrimental to the interest of the society as well. Lifting of the sand from the river bed without valid license and authority attracts violation of OMMC Rules.

7. In such eventuality, while this Court is not inclined to grant anticipatory bail to the Petitioner it is directed that if the Petitioner so chooses and surrender before the learned court in seisin over the matter within two weeks hence, and move for bail the learned Court below may consider the application for bail at the first hour on its own merit strictly on the basis of the material available on record and in case of rejection of the bail, the Petitioner if so desires may move to the higher forum in the second half, in which the event the higher forum may consider the application of the Petitioner preferably on the same day strictly on its own merit independent of the observations made herein and to dispose of on the same day, if there be no other legal impediment.

8. The ABLAPL is disposed of accordingly.

(Chittaranjan Dash)
Judge

B.K Sahoo