

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 9903 of 2021

**Ashish Kumar Barik @ Ashish
Barik**

....

Petitioner

Mr. S.P. Mishra, Sr. Advocate
along with Mr. R.K. Das, Adv.

-Versus -

State of Odisha

....

Opposite Party

Mr. P. Tripathy,
Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER

04.08.2022

**Order No.
04.**

1. This matter is taken up through hybrid mode.
2. Heard learned Sr. Counsel for the petitioner and learned Addl. Standing Counsel for the State
3. The petitioner was arrested on 05.08.2021 in connection with STF P.S. Case No.1 of 2021 corresponding to T.R. Case No.02 of 2021 pending in the Court of learned A.D.J., Gunupur, Rayagada for the alleged commission of offence under Sections 20(B)(ii)(C)/29 of NDPS Act.
4. The prosecution case is that upon receiving reliable information regarding transportation of contraband ganja, the Inspector of Police, STF, CID CB Bhubaneswar along with the staff intercepted a Truck on SH-5 which was coming from Rayagada. Seeing the police personnel, the driver parked the vehicle at a distance and fled away from the spot and could not be apprehended despite efforts. Further, on verification of the vehicle it was found that no one was present therein but, huge quantity of contraband ganja weighing 1995 KG was

found loaded in the truck. The papers of the vehicle which were seized revealed that the same belonged to one Biraj Barik. The contraband was seized and the case was registered followed by investigation. Long after, the petitioner's involvement came to light inasmuch as it was revealed that the petitioner is the cousin of the said Biraj Barik and that he had procured the ganja from Rayagada side for the purpose of illegal trade. It is further alleged that the petitioner is a habitual dealer in ganja and the vehicle was also purchased by him though in the name of his cousin Biraj Barik.

5. It is submitted by Mr. S.P. Mishra, Learned Senior Counsel appearing for the petitioner that admittedly nothing was seized from the possession of the petitioner and he was apprehended long after the alleged occurrence only on surmises and conjectures. It is further submitted that this is a case where the liberty of the petitioner has been seriously curtailed with least adherence to the provisions of the Code of Criminal Procedure as also the Constitutional provisions. The petitioner has been in custody for more than a year. There are materials to show that he has become a paraplegic and is presently confined to a wheel chair.

6. Mr.P. Tripathi, learned Additional Standing Counsel appearing for the state has opposed the prayer for bail by submitting that even though nothing were seized from the possession of the petitioner, yet investigation has revealed that he is the mastermind of the entire operation. Moreover, he is a habitual dealer in contraband articles and had financed the entire operation.

7. From the materials on record it is revealed that the alleged

occurrence took place on 05.01.2021. The truck in question was seized by police along with the contraband as also the documents. All the documents, namely, insurance certificate, permit etc. stand in the name of Biraj Barik. Admittedly, the petitioner was not present at the spot. He was arrested after seven months of the occurrence when investigation purportedly revealed that he had masterminded the occurrence. As such, no contraband was seized from the exclusive and conscious possession of the petitioner. Such being the case, the bar under section 37 of the NDPS Act would not apply. Moreover charge sheet has already been submitted. The petitioner is suffering from a serious neurological problem resulting in his becoming a paraplegic and being confined to a wheelchair for which he was released on interim bail by this Court previously. He has not misused the liberty so granted to him and has surrendered in time.

8. Another aspect which disturbs the conscience of this Court is that the petitioner was supposedly arrested on 05.08.2021 but was produced before the special Judge on 03.09.2021, which is after a lapse of 29 days. It is stated that the petitioner was admitted to the hospital immediately after his arrest as he required treatment and such fact was duly intimated to the court but in view of the report submitted by learned Addl. Sessions Judge –cum- Special Judge, Gunupur, the court had not received any message whatsoever from the I.O. This is a serious infraction of the provision under section 57 of Cr.P.C. which mandates that the person arrested must be produced before the nearest Magistrate within 24 hours of his arrest excluding the time expended for the journey to the court. This is also the mandate of Article 20 of

the Constitution of India.

9. Having regard to the above facts, the period of detention in custody as also the fact that nothing was seized from the exclusive and conscious possession of the petitioner, I am inclined to allow the prayer for bail. Let the petitioner be released on such terms and conditions as the court in seisin over the matter may deem fit and proper to impose.

10. Before parting with the case, this Court deems it proper to observe that the liberty of a person cannot be curtailed without adhering to the mandatory provisions of law as provided under Article 22(2) of the Constitution of India. As has already been discussed hereinbefore, this is a case where the arresting officer/Investigating Officer has, prima facie, contravened the mandatory provisions of the Cr.P.C. as also the underlying safeguards enshrined in the Constitution of India under Article 22(2). Since the Court below has already directed the higher police authorities to take suitable action against the erring investigating officer, this Court can do no more than to concur with such direction and to reiterate that the matter should be dealt with all seriousness. Action taken in the matter shall be informed to this Court by the ADG, CID & CB, Cuttack.

11. List this matter on 7th September, 2022.

12. BLAPL is accordingly disposed of.

13. Issue urgent certified copy as per rules.

(Sashikanta Mishra)
Judge