

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.11031 of 2022

Shyama Bhoi

....

Petitioner

Mr. P.K. Sahoo, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. A. Pradhan, ASC

CORAM: JUSTICE V. NARASINGH

ORDER
23.12.2022

Order No.

01.

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

2. The Petitioner is an accused in T.R. Case No.55 of 2020 pending on the file of learned Addl. Sessions Judge-cum-Special Judge, Koraput, arising out of Semiliguda P.S. Case No.79 of 2020, for commission of offence under Sections 20(b)(ii)(C)/29 of the N.D.P.S Act.

3. Being aggrieved by the rejection of his application for bail U/s. 439 Cr.P.C by the learned Addl. Sessions Judge-cum-Special Judge, Koraput by order dated 26.08.2022 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 18.09.2020 and charge sheet has been filed on 04.12.2020 and keeping in view the nature of accusation, his further continuance in custody is not warranted.

5. Learned counsel for the Petitioner submits that the Petitioner was escorting the Mahindra Pick Up vehicle bearing registration number OR-10-E-6548 from which the contraband to the tune of 1000 kg. was recovered.

6. Relying on the order of rejection and the charge sheet, learned counsel for the Petitioner submits that three persons, namely, Gopal Bhoi, Parmesh Podal @ Dipu, and Kartika Chopadi were the occupants of the said vehicle from which the contraband was seized and they are not the Petitioners before this Court.

7. Hence, it is stated that conscious exclusive possession cannot be attributed to the Petitioner. Therefore, the bar under Section 37 of the N.D.P.S. Act does not come into play.

8. Learned counsel for the State opposes the prayer for bail, inter alia, on the ground that the defence plea as advanced, keeping in view the quantity of contraband, cannot be taken into account at this stage in view of rigors of Section 37 of the N.D.P.S Act.

9. This Court perused the recitals in the case diary and the nature of accusation against the Petitioner.

10. It is not in dispute that the Petitioner was not in the vehicle from which the seizure of contraband was made and the allegation against him is that he being the rider of the motor cycle bearing registration number OD-10-J-7885 was facilitating the movement of the Pick Up vehicle.

11. Taking into account the nature of accusation and the non-commencement of trial and the Petitioner being in custody for more than two years and keeping in view his age (19 years on the date of rejection), 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.

12. Before releasing the Petitioner on bail, learned Court below shall verify assertion regarding **criminal antecedent of similar nature**. If he has such criminal antecedent, this order shall stand recalled.

13. Accordingly, the BLAPL stands disposed of.

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

(V. NARASINGH)
Judge

PKS

