

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.10554 OF 2021

Sarat Kumar Nayak

.... ***Petitioner***
Mr.P. Sahoo, Advocate

-versus-

State of Odisha

.... ***Opposite Party***
Mr.S. Nayak, AGA

CORAM:
MR. JUSTICE D.DASH

Order No.
08.

Order
08.08.2022

1. The matter is taken up through hybrid arrangement (virtual/ physical) mode.
2. This is the successive journey of the Petitioner, who is in custody in connection with Kaptipada P.S. Case No.95 of 2021 corresponding to G.R. Case No.36 of 2021 on the file of learned Sessions Judge-cum-Special Judge, Mayurbhanj, Baripada running for alleged commission of offence under section 20(b)(ii)(C) of the NDPS Act, in filing this application under section 439 Cr.P.C., has prayed for his release on bail.
3. Learned counsel for the Petitioner submitted that this Petitioner having been arrested in the above noted case, is in custody since 02.04.2021. He further submitted that the allegation against this Petitioner is that on the date of raid when he was present in the house which is said to be owned by him, 97 kgs and 194 grams of ganja has been recovered. He further submitted that the house in question was in occupation of other adult members, who were also then present. He submitted that the Petitioner had no connection with the other place at a distance, which was raided later and it is being said that this Petitioner confessed to have kept

ganja in that house and therefrom bulk quantity of ganja being seized; the possession of the same being attributed to this Petitioner. It was submitted that there is no material on record to show that this Petitioner was in exclusive charge/control of that house as also the first house raided and no material has also been collected to show that this Petitioner had brought those items and kept the same in those houses. He submitted that investigation of the case is complete and the Petitioner having been granted with interim bail on earlier occasions to take care of his ailing wife, who was under treatment over a period of time, he has surrendered before the Court on the date fixed and no such adverse report has come against him. In view of all these above, when the petitioner is a permanent resident of district of Mayurbhanj and there remain no scope on the part of the Petitioner to flee from justice as also the question of tampering the evidence does not arise as most of the witnesses are officials; he urged for reconsideration of the prayer for grant of bail to the Petitioner as according to him, basing upon the materials collected, at this stage the bar contained under section 37 of the NDPS Act does not stand on the way of grant of bail.

4. Learned counsel for the State opposed the move in view of the quantity of contraband involved in the case. He, however, did not dispute the position that the Petitioner being arrested in the case is in custody since 02.04.2021 and that the investigation of the case is complete. He also submitted that in the present case, the house from which bulk quantity of ganja has been recovered is not situated near the house where raid had been conducted first. According to him, the material against this Petitioner is his

statement before the police as regards the keeping of ganja in the second place.

5. Considering the submissions made and on going through the materials on record, as placed; further taking into account the surrounding circumstances including the period of detention of the Petitioner in custody an absence of any report on his conduct during interim bail; it is directed that the Petitioner be released on bail by the Court in seisin of the case on such terms and conditions as deemed just and proper with further conditions that the petitioner will appear in person before the Court in seisin of the case on each and every date of posting of the case till conclusion of the trial; shall appear before the Inspector-in-Charge of the concerned P.S. on every Monday in between 10.00 am to 2.00 pm till conclusion of the Trial; shall not indulge himself in any similar type of activities; and shall not leave the jurisdiction of the Court in seisin of the case without prior permission of the said Court.

6. Violation of any of the above condition(s) shall entail cancellation of bail.

7. The BLAPL is accordingly disposed of.

Issue urgent certified copy of this on proper application.

**(D. Dash),
Judge.**