

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.10625 of 2021

Shankar @ Bablu Sahu

.... ***Petitioner***
Mr. S. Panda, Advocate

-versus-

State of Odisha

.... ***Opp. Party***
Mr. S.S. Mohapatra, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

21.01.2022

Order No.

01.

1. This matter is taken up through Video Conferencing Mode.
2. Heard Mr. S. Panda, learned counsel for the Petitioner and Mr. S.S. Mohapatra, learned counsel for the State. Perused the F.I.R., Case Diary and other relevant documents.
3. This is an application under Section 439 of the Criminal Procedure Code.
4. The Petitioner is an accused in Special G.R. Case No.58 of 2021 corresponding to Padampur P.S. Case No.169 of 2021 pending in the court of learned Additional Sessions Judge-cum-Special Judge, Padampur for commission of offence punishable under Sections 20(b)(ii)(C)/29 of the N.D.P.S. Act.
5. It is alleged that on 06.08.2021 I.I.C. Padampur Police Station received reliable information regarding illegal transportation of contraband ganja in a white colour Swift Car bearing registration No.CG-07-MB-4167 from Buden side towards Chhatisgarh via Padampur. After receipt of direction from the IIC, the informant

along with other police staffs went to the spot to verify the veracity of the information. On the way, the informant arranged two local witnesses. At about 6.00 A.M., they reached at Jhankarpali Chhak and placed Naka at about 6.15 A.M., the alleged vehicle was found coming from Buden side at high speed in a suspicious matter. After intercepting the vehicle, the driver and another person got down from the car and fled away from the spot. The Petitioner sitting inside the car and on being asked he disclosed his identity as Sankar @ Bablu Sahu. On verification 49 Kgs. and 760 grams, he detected illegal transportation of contraband ganja packed in two plastic gunny bags by a Swift Car and seized the same from the seized car.

6. It is submitted by learned counsel for the Petitioner that the Petitioner was traveling as gratuitous passenger in the vehicle. He further submits that the driver of the said vehicle and another person those, were going along with the Petitioner. On intervention of police, they fled away from the spot. Since the Petitioner had no knowledge, he was sitting in the said vehicle. It is also submitted to be on record that the petitioner does not have any criminal antecedent of similar nature of offence. Further, it is submitted that since the contraband articles have not been seized from the conscious possession of the Petitioner, the bar of Section 37 of the N.D.P.S. Act shall not apply to the facts of the present case.

7. Learned counsel for the State vehemently opposes the prayer for bail of the Petitioner and submits that the quantity seized is more than commercial quantity, which bar under Section 37 of the N.D.P.S. Act.

8. Having heard learned counsel for the parties and considering the period of detention of the Petitioner and the bar under Section 37

of the N.D.P.S. Act would not be attracted against the Petitioner, it is directed that let the Petitioner be released on bail by furnishing a bail bond of Rs.50,000/- (rupees fifty thousand) with two local solvent sureties each for the like amount to satisfaction of the learned court in seisin over the matter subject to conditions that the Petitioner shall not get involved in any offence of similar nature while he is on bail, he shall not tamper with the prosecution evidence in any manner whatsoever and shall appear in court during trial on each and every date without fail. Violation of any of the terms and conditions shall entail cancellation of bail granted hereby

9. It is open for the court in seisin over the matter to impose any conditions as may deem just and proper.

10. It is further directed that the bail granted to the Petitioner is subject to the condition that learned court below shall verify whether the Petitioner has any criminal antecedents. In the event it is found that the Petitioner has any criminal antecedents, this bail order shall automatically stands revoked.

11. The Bail Application is accordingly allowed.

12. As the restrictions due to resurgence of COVID -19 situation are continuing, learned counsel for the parties may utilize a print out of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned Advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021 and Office Order dated 7th January, 2022.

