

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL NO.10707 OF 2021

Vishal Kumar

....

Petitioner

Mr. Shyam Manohar, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. Karunakar Das, ASC.

CORAM:

MR. JUSTICE D.DASH

ORDER

24.01.2022

Order No.

01. 1. This matter is taken up by video conferencing mode.
2. The Petitioner being in custody in connection with Machhakund, Koraput P.S. Case No.81 of 2020 corresponding to T.R. Case No.51 of 2020 on the file of learned Sessions Judge-cum-Special Judge, Koraput, running for commission of offence under Section-20(b)(ii)(C) of the IPC, has filed this application under Section 439 of the Cr.P.C. for his release on bail.
3. Heard Mr. Shyam Manohar, learned Counsel for the Petitioner and Mr. Karunakar Das, learned Addl. Standing Counsel.
- I have gone through the materials placed.
4. The prosecution case is that the Petitioner being an occupant in the Truck bearing Registration No.HR-61A-5131, was involved in transportation of 350 Kgs. 400 Grams of ganja and at the relevant time, he was sitting with accused Rohtash Kumar (Helper) in the said Truck which was being driven by Accused-Sumit Kumar, who all hail from the State of Haryana.

5. The materials, as placed, reveal that on interception of the vehicle in question, this Petitioner and two others were very much found in the vehicle and 350 Kgs. 400 Grams of ganja kept in 16 packets have been recovered from the Truck in course of search which have been seized.

6. Learned Counsel for the Petitioner submits that in view of the non-compliance of the mandatory provision of section-50 of the NDPS Act, the bar contained under section-37 of the NDPS Act would not stand on the way of grant of bail to the Petitioner. In this connection, he has relied upon the decision of the Hon'ble Apex Court in case of *Sk. Raju Alias Abdul Haque Alias Jagga Vrs. State of West Bengal*; (2018) 9 SCC 708. Relying on the paragraph-22 of the judgment, he contends that here in the facts and circumstances of the case, the non-compliance of mandatory provision of section-50 of the Act is quite clear and thus in so far as the Petitioner is concerned, he being an innocent passenger in the truck having no knowledge of the items loaded, he is entitled to be released on bail on such terms and conditions as deemed just and proper.

6. On a careful reading the cited decision, it is seen that the same was a case of search of a bag held by the Accused/Appellant as well as his trousers and in that factual settings, the Hon'ble Apex Court has considered the said aspect and examined the matter relating to compliance of mandatory provision of section-50 of the Act in further saying that it was not only a case of search of the bag held by the Accused but also of his persons and finally in that case, the compliance of the mandatory provision of law has been answered in the affirmative. The facts and circumstances of the present case are completely different that here the recovery of

contraband ganja has been made being kept in 16 pockets loaded in the Truck wherein this Petitioner with two other Accused persons were present and detained after interception.

8. In view of all these aforesaid; further keeping in view the quantity of contraband ganja said to have been seized with other surrounding circumstances as those emanate from the materials on record; on the face of the bar contained in section 37 of the NDPS Act, I am not inclined to grant bail to the Petitioner.

9. The BLAPL is accordingly dismissed.

10. As the restrictions due to resurgence of COVID-19 situation are continuing, learned Counsel for the parties may utilize a printout 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 Court's Office order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

(D. Dash)
Judge.