

IN THE HIGH COURT OF ORISSA AT CUTTACK
BLAPL No.10733 of 2021

Rakesh Kumar Jena

....

Petitioner

Mr. Amlan Shakti Paul, Adv.

-versus-

State of Odisha

....

Opposite Party

Mr. Anand Das, ASC

CORAM:

MR. JUSTICE S.K. PANIGRAHI

ORDER

07.03.2022

Order No.

01. 1. This matter is taken up through hybrid arrangement.
2. Heard learned counsel for the petitioner and learned counsel for the State.
3. The petitioner being in custody in connection with C.T. Case No.4484 of 2020, arising out of STF P.S. Case No.25 of 2020, pending in the court of the learned S.D.J.M., Bhubaneswar, registered for the alleged commission of offence under Sections 25(1)(1-AA)/ 27 of the Arms Act, has filed this application under Section 439 of Cr.P.C. for his release on bail.
4. The following weapons were seized from the possession of the petitioner and the co-accused:
- (i) one USA made 7 MM pistol with Magazine;
- (ii) one USA 7 MM pistol with Magazine;
- (iii) One Taiwan made Revolver carrying no.W18L50689 (GAMA PR 725);
- (iv) four numbers of country made Revolvers;
- (v) one 7.62 MM live SLR ammunition; and
- (vi) 11 numbers of country made live ammunitions.

5. The case of the prosecution, in brief, is that the informant reported the matter before the Superintendent of Police Special Task Force, CID, CB Odisha, Bhubaneswar alleging that on 15.10.2020 at about 2.00 p.m. the informant got information that the petitioner along with the other co-accused persons are the dealers of the Fire Arms and Ammunitions and have been illegally smuggling and delivering the same to different customers and antisocial persons near Dasapur Chandaka P.S. Based on the information received, the informant and their staff reached at the spot and apprehended the petitioner and the other co-accused persons.

6. Learned counsel for the petitioner submits that the petitioner has been illegally detained by the STF police without any registration of FIR and finding no other way, the wife of the petitioner filed a petition under Sections 57 and 97 of Cr.P.C. vide Misc. Case No.197 of 2020. He further submits that the petitioner has been falsely implicated in this case and that there has been no seizure of any arm or ammunition from the possession of the petitioner.

7. Before parting the case, it is apposite to quote Sections 25(1)(1AA) and 27 of the Arms Act, 1959 as follows:

“25 (1) Whoever— (a) manufactures, sells, transfers, converts, repairs, tests or proves, or exposes or offers for sale or transfer, or has in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition in contravention of section 5; or

(b) shortens the barrel of a firearm or converts an imitation firearm into a firearm in contravention of section 6; or 2 * * * * *

(d) brings into, or takes out of, India, any arms or ammunition of any class or description in contravention of section 11,

shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

(1AA) whoever manufactures, sells, transfers, converts, repairs, tests or proves, or exposes or offers for sale or transfer or has in his possession for sale, transfer, conversion, repair, test or proof, any prohibited arms or prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine.

27. Punishment for using arms, etc.—(1) Whoever uses any arms or ammunition in contravention of section 5 shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

(2) Whoever uses any prohibited arms or prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine.

(3) Whoever uses any prohibited arms or prohibited ammunition or does any act in contravention of section 7 and such use or act results in the death of any other person, shall be punishable with death.”

The case of the petitioner can be squarely visualized in the above mentioned sections.

8. Considering the nature and gravity of the accusation, nature and character of evidence appearing against the petitioner, the stringent punishment provided and that there are reasonable

grounds for believing that the petitioner is not guilty of the offence alleged or not likely to commit any such offence, which is not possible to record in this case, the prayer for bail is devoid of merit. Hence, his prayer for bail stands rejected.

9. The BLAPL is accordingly, dismissed.

10. Urgent certified copy of this order be granted on proper application.

(S.K. Panigrahi)
Judge

BJ

