

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.12190 of 2022

Sisir Nayak @ Rajkumar

....

Petitioner

Mr. S.K. Nayak, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. P.K. Maharaj, 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.190 of 2022 pending on the file of learned 2nd Addl. Sessions Judge, Khurda at Bhubaneswar, arising out of Bharatpur P.S. Case No.194 of 2022 for commission of offence under Section 20(b)(ii)(C) of the NDPS Act.

3. Being aggrieved by the rejection of his application for bail U/s.439 Cr.P.C. by the learned 2nd Addl. Sessions Judge, Khurda at Bhubaneswar by order dated 30.11.2022 in the aforementioned case, the present BLAPL has been filed.

4. It is submitted that the Petitioner is in custody since 18.05.2022 and the charge sheet has been filed on 12.11.2022. He further submits that as per materials on record and the final form, it can be seen that seizure from the possession of the Petitioner was 14 Kg. 800 Grams (ganja) but he has been entangled with another co-accused from whom the seizure was to the tune of 20 Kg. 300 grams

so as to make a total seizure of 35 Kg. 100 Grams so as to attract the bar contained in Section 37 of the N.D.P.S Act. It is stated that since seizure was from a public place, conscious exclusive possession cannot be attributed to the Petitioner so as to bring into play the rigors of Section 37 of the N.D.P.S Act and wrong weighment also cannot be ruled out at this stage. Since the Petitioner is the first offender, he may be released on bail.

5. Learned counsel for the State submits that there are materials on record that both the present Petitioner and co-accused were carrying contraband (Ganja) to the tune of 35 Kg. 100 Grams and dissection of quantity at this stage is not permissible in law as bar under Section 37 of the N.D.P.S Act is squarely attracted. Therefore, the Petitioner ought not to be released on bail.

6. Considering the materials on record qua the complicity vis-à-vis the Petitioner, keeping in view his age and that he is the first offender as stated, 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.

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

8. The BLAPL stands disposed of.

9. Urgent certified copy of this order be granted as per the rules.

(V. NARASINGH)
Judge

PKS