

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.11079 of 2021

Samara Golori

.... ***Petitioner***
M/s. S.K.Jena, Advocate

-versus-

State of Orissa

.... ***Opp. Party***
M/s.M.Mishra, A.S.C.

CORAM:

JUSTICE G. SATAPATHY

ORDER

02.11.2022

Order No.

- 08.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. This is an application U/S. 439 of Cr.P.C. by the Petitioner for grant of bail in connection with P.R. No.18 of 2021-22 corresponding to T.R. Case No.69 of 2021 pending in the Court of learned District & Sessions Judge-cum-Special Judge, Koraput, Jeypore for commission of offence punishable U/S. 20(b)(ii)(C) of the N.D.P.S. Act on the allegation of possessing 27Kgs of contraband Ganja along with another co-accused.
 3. In the course of hearing of the bail application, learned counsel for the petitioner submits that the trial has already commenced but the seizure witness has turned hostile to state about the seizure of contraband article from the exclusive possession of the petitioner and the official witness has also admitted in cross examination that he had not seen the petitioner bringing the jarri bag and keeping the same at the spot and, thereby, even if the materials on record are considered to be true, compliance of Section 37 of N.D.P.S. Act is not at all attracted in this case. It is further alternatively submitted that there are two persons with one jarri bag and it is not specified by

the prosecution as to under whose exclusive possession the jarri bag was found and, therefore, compliance of Section 37 of N.D.P.S. Act again would not be attracted against the petitioner on that score. It is further submitted that the petitioner is inside custody since 20.08.2021 and in the meanwhile more than one year has elapsed. On these above grounds, learned counsel for the petitioner prays to enlarge the petitioner on bail.

4. On the other hand, learned counsel for the State opposes the bail application of the petitioner vehemently and he further submits that at the time of consideration of bail application, detailed analysis of evidence and meticulous examination of documents are impermissible and whatever the witness has stated in his cross-examination cannot be taken into consideration to grant bail. It is further submitted that the quantity of Ganja recovered in this case being 27kgs., Section 37 of the N.D.P.S. Act is squarely attracted and the petitioner thereby cannot be released on bail unless he satisfies the twin conditions enumerated therein. It is also prayed to reject the bail application of the petitioner.

5. Considering the rival submissions, the period of detention in custody since 20.08.2021 and the fact that the trial has already commenced and keeping in view the object of bail to be not punitive, rather protecting the liberty of a person and further taking into consideration that no criminal antecedent has been reported against the petitioner and no materials is also placed on record to suggest that the petitioner would abscond or tamper the evidence of the witness and regard being had to the quantity of contraband Ganja and the number of accused involved in this case as also the manner and

circumstance of recovery of contraband in this case, this Court considers the bail application of the petitioner leniently.

6. Hence, the prayer for bail of the petitioner is allowed and the Petitioner be released on bail on furnishing bail bonds of Rs.50,000/- with two solvent sureties each for the like amount to the satisfaction of the learned Court in seisin of the case on such terms and conditions as deem fit and proper with further conditions that the petitioner shall not commit similar type of offence while on bail and that the petitioner shall not leave the jurisdiction of the trial Court without prior permission till conclusion of the trial and that the petitioner shall attend the trial Court on each date of posting of the case unless his attendance is dispensed with.

7. Accordingly, the BLAPL stands disposed of.

8. Urgent certified copy of the order be granted on proper application.

Kishore

(G. Satapathy)
Judge