

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.11141 of 2021

Bhagirathi Sabar* *Petitioner

Mr. S.S. Ray-2, Advocate

-versus-

State of Odisha* *Opp. Party

Mr. Susamarani Sahoo
Addl. Standing Counsel

**CORAM:
JUSTICE S.K. SAHOO**

**ORDER
28.10.2022**

Order No.

07. This matter is taken up through Hybrid Arrangement (Video Conferencing/Physical Mode).

Heard learned counsel for the petitioner and learned counsel for the State.

This is an application under section 439 of Cr.P.C. in connection with T.R. Case No.04 of 2019 arising out of Puttasingh P.S. Case No.05 of 2019 pending in the Court of learned Additional Sessions Judge -cum- Special Judge, Gunupur for offences punishable under sections 20(a)/20(b)(ii)(C) of the N.D.P.S. Act.

The petitioner moved an application for bail before the Court of learned Additional Sessions Judge -cum- Special Judge, Gunupur(I/c), which was rejected on

18.11.2021.

Learned counsel for the petitioner submitted that the petitioner is in judicial custody since 03.02.2021 and earlier when he approached this Court for bail in BLAPL No.1478 of 2021, the said application was rejected as per order dated 28.09.2021. Learned counsel further submitted that the occurrence in question took place on 15.01.2019 and nothing was seized from the possession of the petitioner. The prosecution case against the petitioner is based on the statements of two witnesses, namely, Babula Kar and Jonathan Lima, who stated to have identified the petitioner fleeing away from the cottage where the alleged seizure of contraband ganja was made. He further submitted that Babula Kar has already been examined as P.W.2 and he has not supported the prosecution case. The deposition copy of P.W.2 has been filed.

When the learned counsel for the petitioner made a submission before this Court on 28.09.2022 that the other witness, who implicated the petitioner, namely, Jonathan Lima is dead, the learned counsel for the State was asked to obtain instruction on this aspect.

Today, learned counsel for the State has produced the written instruction from the Inspector in-charge of Puttasingh police station which indicates that Jonathan Lima is dead. The written instruction is taken on record.

Learned counsel for the petitioner submitted that since the petitioner was implicated by two persons during the course of investigation, out of which one has not supported the prosecution case and the other is dead and there is no other material against the petitioner, the bail application of the petitioner may be favourably reconsidered.

Learned counsel for the State on verification of the case record fairly submitted that there is no criminal antecedent against the petitioner.

Considering the submissions made by the learned counsel for the respective parties, though it is a case of seizure of commercial quantity of ganja but since there is no material available against the petitioner and there is also no criminal antecedent and particularly in view of the lis pendens development of the case and the change in the circumstances after rejection of the earlier bail application and the period of detention of the petitioner in judicial custody, I am inclined to reconsider the prayer for bail and direct the petitioner to be released on bail.

Let the petitioner be released on bail in the aforesaid case on furnishing bail bond of Rs.50,000.00 (rupees fifty thousand) with two local solvent sureties each for the like amount to the satisfaction of the Court in seisin over the matter with further terms and conditions as the learned Court may deem just and proper subject to condition that

the petitioner shall appear before the learned trial Court on each date when the case would be posted for trial.

Violation of any terms and conditions shall entail cancellation of bail.

The BLAPL is accordingly disposed of.

Issue urgent certified copy as per Rules.

(S.K. Sahoo)
Judge

RKM

