

IN THE HIGH COURT OF ORISSA AT CUTTACK
BLAPL No. 11242 of 2021

Mickey @ Manoranjan Sahoo

....

Petitioner

Mr. D. Panda,
Advocate

-Versus -

State of Odisha

....

Opposite Party

Mr. S.K. Mishra,
Additional Standing Counsel

CORAM:
JUSTICE SASHIKANTA MISHRA

ORDER
18.02.2022

Order No.
3.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned Additional Standing Counsel for the State.
3. The petitioner is in custody since 08.07.2020 in connection with Khurda Model P.S. Case No. 232 of 2020 corresponding to T.R. Case No. 34 of 2020 pending in the court of learned Additional Sessions Judge-cum-Special Judge, Khurda for the alleged commission of offence under Sections 21(C) & 29 of the NDPS Act read with Section 25(1) (a) of the Arms Act.
4. This is a peculiar case inasmuch as the prosecution allegation is that a total quantity of 3.602 Kgs. of brown sugar, one pistol without bullet and other articles as well as cash of Rs.16,500/- were seized from the possession of the petitioner whereupon he was taken into custody. Upon completion of the investigation and submission of charge sheet, the trial has commenced in course of which as many as ten witnesses have already been examined. What

is surprising to note is that all are official witnesses and yet, out of the said witnesses, seven witnesses have not supported the case of the prosecution.

5. Mr. D. Panda, learned counsel for the petitioner forcibly argues that when the official witnesses do not support the case of the prosecution, it implies that there is no basis for implicating the petitioner and therefore, his liberty should not be curtailed, as it would be a direct infringement of his fundamental right under Article 21 of the Constitution of India.

6. Mr. S.K. Mishra, learned Additional Standing Counsel has opposed the prayer for bail by submitting that having regard to the huge quantity of contraband seized from the possession of the petitioner, he should not be shown any leniency despite the fact that some of the witnesses have turned hostile.

7. I have given my anxious consideration to the rival submissions as above and the materials on record. I have also perused the deposition of the witnesses examined in the court below so far. Non-support of the prosecution case by the official witnesses including the Police Personnel is a matter of grave concern which the concerned authorities should take note of but, fact also remains that the fundamental right to liberty of a person guaranteed under Article 21 of Constitution cannot be curtailed in the absence of any acceptable evidence against him at least so far.

8. For the foregoing reasons therefore, this Court is of the view that in the peculiar facts and circumstances of the case, the petitioner deserves to be enlarged on bail despite the allegedly seized contraband being more than commercial quantity. Let the

petitioner be released on bail on such terms and conditions as the court in seisin over the matter may deem fit and proper to impose including the condition of furnishing cash security of Rs. 2,00,000/- (Rupees two lakhs) and that he shall personally appear before the trial court on each date of posting of the case, failing which appropriate orders shall be passed to take him into custody again. Further, he shall also appear before the IIC of Model Police Station Khurda every Monday at 10.00 A.M. for a period of six months, which fact shall be certified by the IIC before the Court once every month. It is open to the concerned authorities to take note of the conduct of the official witnesses in the ongoing trial.

9. The BLAPL is accordingly disposed of.

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

(Sashikanta Mishra)
Judge