

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.11271 of 2021

Kabiraj Gageranga @ Gagerenga ***Petitioner***
Mr. S. S. Ray-2, Advocate

-versus-

State of Odisha ***Opposite Party***
Mr. P.C.Das, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

13.07.2022

Order No.

02.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard Mr. S.S. Ray-2, learned counsel for the Petitioner as well as Mr. P.C. Das, learned Additional Standing Counsel for the State. Perused the F.I.R., case diary and other relevant documents as well as statement of the witnesses.
3. The present application has been filed by the petitioner under Section 439 of the Criminal Procedure Code for release on bail in connection Muniguda P.S. Case No.71 of 2021 corresponding to T.R. Case No.60 of 2021 pending in the court of learned Additional Sessions Judge-cum-Special Judge, Gunupur for commission of offence punishable under Section 20(b)(ii)(C)/29 of the N.D.P.S. Act.
4. The prosecution case, in a nutshell, is that one Pratap Behera, S.I. of Police lodged a written report before the concerned Police Station on 08.02.2021 which has been treated as F.I.R. in this Case. According to the said written report, S.I. of Police received reliable

information that a few persons of village Kutudukupa and Muchiguda are preparing to transport huge quantities of contraband ganja. It is alleged that the persons named in the F.I.R. have colluded with local ganja mafias and have entered into a conspiracy with them. Further in connivance with those ganja Mafias, villagers have raised cannabis plants in the locality and after harvesting crops, contraband ganja was prepared and stored inside the jungle and further it is alleged that the petitioners were waiting for a vehicle for transportation of such contraband ganja at a nearby road. It is further alleged in the F.I.R. that upon getting such informant, the informant accompanied by other police officials reached at the spot and upon reaching at the spot, they found that 8 to 10 persons were present at Machiguda and Kutudukupa village junction. After seeing the police party, above noted 8 to 10 persons started running towards their village. However on being chased by the police party, four persons could be nabbed and others managed to flee away from the spot. The persons, who were apprehended by the police party including the petitioner, on being asked by the police, disclosed their names as Bhima Gageranga, Prasad Gageranga, Trinath Gageranga and Kabiraj Gageranga. Initially, they did not disclose anything about the contraband ganja and did not give any definite reply to the questions asked by the police. However, when the police party present at the spot started searching in the locality, the accused petitioners voluntarily came forward and led the police party to the spot where the contraband ganja packets were concealed under the bushes in the road side forest. It is further stated in the F.I.R. that a total quantity of ganja measuring 653 Kgs, which were kept concealed in the road side forest, were recovered by the police party.

5. It is submitted by learned counsel for the petitioner that the petitioner is an innocent villager and he is no way involved in the present crime. Further it is submitted that he has been illegally arrested

by the police and is in custody since 08.02.2021. It is further contended by learned counsel for the petitioner that the investigation in the present case has been concluded and the final form has already been submitted. Learned counsel for the petitioner further submits that the petitioner is an innocent villager who belongs to the nearby village. He was summoned by the police party to assist them in searching in locality for finding out the contraband ganja which was concealed inside the jungle. However, when the contraband ganja was located, the police party arrested some of the villagers, who had assisted them voluntarily. It is further contended by learned counsel for the petitioner that the alleged contraband ganja having not been recovered from the exclusive and conscious possession of the present petitioner, the bar under Section 37 of the N.D.P.S. Act would be applicable to the facts of the present case. He further submits that the allegation in the F.I.R. are omnibus in nature, i.e. there is no specific allegation against the present petitioner with regard to any specific role played by the present petitioner in the alleged illegal trafficking of contraband ganja.

6. After the petitioner was arrested by the police and forwarded to custody, the petitioner moved an application for bail before the learned Additional Sessions Judge-cum-Special Judge, Gunupur for bail in T.R. Case No.60 of 2021. However, the learned court below was not inclined to grant bail to the petitioner and accordingly, the bail application filed by the petitioner has been rejected by the learned court below by order dated 22.11.2021.

7. Learned counsel for the petitioner further contended that the petitioner does not have any criminal antecedents of similar nature of offence. He further submits that the petitioner is a poor man of the locality and he has been falsely implicated in the present case. Moreover, the alleged contraband ganja has not been seized by the

police from the exclusive and conscious possession of the present petitioner. On the contrary, it is submitted that the contraband ganja, which has been seized in the present case have been seized with the help and assistance of the present petitioner, who is none other than a local villager staying in the nearby village.

8. It is also submitted by leaned counsel for the petitioner that there is no scope for absconding or fleeing from the hands of the justice and that the petitioner is a local man and that the petitioner may be released on bail by imposing any terms and conditions as would be deemed just and proper.

9. Leaned counsel for the State, on the other hand, submits that the present petitioner and other co-villagers are involved in the cultivation of cannabis plants illegally. He further submits that local ganja mafias have been helping the petitioner and other villagers in the venture to produce the contraband ganja. Thereafter, the said ganja Mafias collected the contraband ganja from the cultivators and illegally transport the same to different parts of the country to earn huge money. It is further contended by learned counsel for the State that illegal trafficking of contraband ganja in the State of Odisha is rising day-by-day, therefore, no leniency should be shown to the petitioner or to any similarly situated persons. Merely because the alleged contraband ganja was not recovered from the exclusive and conscious possession of the petitioner, the petitioner is not entitled to be released on bail. He further submits that the conscious and exclusive possession of contraband ganja is a matter to be examined by the trial court in course of the trial and therefore, the petitioner will get an opportunity to explain his stand during trial before the court below. In such view of the matter, learned counsel for the State urges before this Court that the bail application filed by the petitioner be rejected.

9. Having heard learned counsel for the parties and upon perusal of the case diary, F.I.R. and the statement of the witnesses, this Court is of the considered view that the investigation in the present case has not been done properly and by scrupulously following the provisions of the N.D.P.S. Act.

10. Considering the fact that the N.D.P.S. Act provides severe punishment for commission of any offence as provided under the said Act, the Investigating Agency is required to be more serious and be specific in their investigation. However, on a conspectus of the surrounding facts and circumstances and having regard to the prosecution case as narrated in the F.I.R., this Court is not absolutely convinced with regard to the suspicion that the present crime would only lead towards the petitioner. Moreover, the alleged contraband ganja have not been seized from the exclusive and conscious possession of the present petitioner, bar under Section 37 of the N.D.P.S. Act would not be applicable to the facts of the present case.

11. Regard being had to the aforesaid aspects of the matter and considering the entirety of the present case and taking into consideration the period of detention of the petitioner as well as role of the present petitioner in the alleged crime, this Court is inclined to release the petitioner on bail subject to petitioner furnishing a bail bond of Rs.50,000/- (rupees fifty thousand) with two local solvent sureties each for the like amount to the satisfaction of the learned court in seisin over the matter subject to following conditions that :-

- I. The petitioner shall not be involved in any offence of similar nature;
- II. he shall not tamper with the prosecution evidence or try to threaten or influence the witnesses in any manner whatsoever;

- III. he shall not make any default in attending the court during trial on each date without fail; and
- IV. he shall appear before the concerned Police Station once in a fortnight preferably on 'Sunday' in between 10.00 A.M. to 1.00 P.M. till conclusion of trial.

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

12. It is open for the court in seisin over the matter to impose other conditions as may be deemed just and proper.

13. It is further directed that the bail granted to the Petitioner is subject to the condition that learned court below shall verify whether the Petitioner has any criminal antecedents of similar nature. In the event it is found that the petitioner has any criminal antecedents, this bail order shall automatically stand revoked.

14. The Bail Application is accordingly disposed of.

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

(A.K. Mohapatra)
Judge