

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.11330 of 2021

Kalta Rama Korubilli

.... ***Petitioner***
M/s.M.Padhy, Advocate

-versus-

State of Orissa

.... ***Opp. Party***
Ms.B.Sahu, C.G.C.(for N.C.B.)

CORAM:

JUSTICE G. SATAPATHY

ORDER

28.09.2022

Order No.

- 10.
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 NCB/Case No. 07/NCB/BBSR/2017 corresponding to T.R. Case No.24 of 2017 pending in the Court of learned Addl. Sessions Judge-cum-Special Judge, Koraput for commission of offence punishable U/Ss. 20(b)(ii)(C) and 25/29 of NDPS Act on the allegation of abetting transportation of commercial quantity of contraband Ganja to the tune of 2037 Kgs. in a truck.
 3. In the course of hearing of the bail application, learned counsel for the petitioner submits that the petitioner was neither apprehended from the spot nor was he found in possession of any contraband substances and he has been implicated in this case solely on the basis of confession of co-accused-driver Apa Rao who has already been granted bail by this Court vide order passed on 12.01.2021 in BLAPL No. 7598 of 2019. It is also submitted that the petitioner is inside the custody since 11.01.2018 and admittedly no criminal antecedent is reported against the petitioner. Learned counsel for the petitioner under these grounds prays to enlarge the petitioner on bail.
 4. On contrary, learned counsel for the N.C.B. submits that the petitioner is the owner of the truck allegedly carrying 2037 Kgs.

contraband Ganja but she, however, candidly submits that neither the petitioner was apprehended from the spot nor was found apprehended with the seized contraband Ganja in this case and he was arrested after two months of the alleged occurrence. It is also submitted by her that the petitioner having allegedly involved in abetting commission of offence involving commercial quantity of contraband Ganja is not entitled to be released on bail in view of the specific bar U/S. 37 of the N.D.P.S. Act.

5. After having considered the submissions advanced on behalf of the parties upon perusal of the record, it appears that the petitioner was neither apprehended from the spot nor was found in conscious possession of any contraband articles at the time of his apprehension. Learned counsel for the petitioner at the time of filing bail application has also annexed the photocopy of the certified copy of complaint filed by N.C.B. in the Court in which at serial No. 37 it has been stated as follows:-

“Notice under section 67 was sent to Sh. Ramu Korubilli on 06.12.2017 and 11.01.2018 through speed post asking him to appear before the NCB Office, but he did not turn up before the Intelligence Officer, NCB, Bhubaneswar till date, though he has received the same. This prominently shows the diligence at the part of Sh. Ramu Korubilli and also his negligence and disobeys to the Department to reach to a legally conclusive end, which itself is self-sufficient to prove his guilt in respect of seizure of 2037 Kgs. of Ganja in Koraput on 24.11.2017 by NCB, Bhubaneswar Sub-Zone.”

(exact verbatim quoted)

6. The above facts indicate that the petitioner’s implication in this case is on the basis of a notice U/S. 67 of the N.D.P.S. Act which speaks about the power to call for information etc. In response to the submission made for the petitioner about his implication in this case on the basis of statement of co-accused made before the authority vested with the power to investigate under the N.D.P.S. Act, it is clarified that confession of co-accused before the authority vested with power to investigate N.D.P.S. Act is inadmissible under law which is reiterated by Apex Court in **Tofan**

Singh Vrs. State of Tamil Nadu; (2020) 80 OCR(SC)641. Besides, the complaint as referred to above also discloses about co-accused stating before the authority the name of one Gouri Shankar to be the owner of the truck, which was later found to be false. It is also not denied by N.C.B. that the petitioner is inside the custody since 11.01.2018 and he has no criminal antecedent.

7. Considering the nature and gravity of accusations coupled with facts narrated above and regard being had to the pre-trial detention of the petitioner and taking into consideration the mandate of Section 37(1)(b)(ii) of the N.D.P.S. Act after applying the law laid down in ***Tofan Singh(supra)*** and release of co-accused-Driver against whom transportation of aforesaid contraband Ganja is directed on bail, this Court feels it proper to enlarge the petitioner on bail.

8. 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 leave the jurisdiction of the learned trial Court without prior permission till conclusion of trial in the case and the petitioner shall attend the trial Court on each date of posting of the case unless his attendance is dispensed with.

9. Accordingly, the BLAPL stands disposed of.

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

Kishore

(G. Satapathy)
Judge