

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2849 of 2021

***Sanjay Jena @ Sanjay Kumar Jena
@ Kalia***

.... ***Petitioner***

-versus-

State of Odisha

.... ***Opposite Party***

CORAM: JUSTICE S.PUJAHARI

ORDER

11.08.2022

Order No.

03.

- 1.This matter is taken up through Hybrid mode.
2. Heard learned counsel for the Petitioner and learned counsel for the State.
- 3.This application under Section 482 of Cr.P.C. has been filed by the Petitioner with a prayer to quash the FIR in connection with Kanas P.S. Case No.33 of 2020 corresponding to G.R. Case No.603 of 2020 pending in the court of learned S.D.J.M., Puri.
4. It is submitted by the learned counsel for the Petitioner that in the FIR, Petitioner's name was not there but the charge sheet having been filed against the Petitioner, the learned S.D.J.M., Puri has taken cognizance under Sections 452/294/506/34 IPC and Section 25 of the Arms Act and issued has been N.B.W(A) against him. But the same is hardly a ground to quash the proceeding against the Petitioner as during investigation, if the

materials are available against a person indicating his involvement in the commission of an offence, the Police can file charge sheet against him notwithstanding he was not named in the FIR. In other words being named in the FIR as an accused is not a sine qua non for prosecution as an accused challaned.

5. But, during the course of hearing as it is submitted by the learned counsel for the Petitioner that since the Petitioner is now ready and willing to surrender before the trial court and cooperate with the trial, the trial court may be directed to release him on bail on any terms and conditions as it may deem just and proper even if this Court is not inclined to quash the prosecution against him.

6. Learned counsel for the State vehemently opposes to release the Petitioner on bail.

7. Considering the facts and the submissions made, though this Court is not inclined to interfere with the impugned order but directs that if the Petitioner surrenders before the court in seisin over the matter and moves for bail within four weeks' hence, the court in seisin over the matter shall taking into consideration the fact that the co-accused persons are on bail so also taking note of the law laid down by the apex Court in the case of **Satender Kumar Antil vrs. Central Bureau of Investigation & another**, reported in **2021 (II) OLR (SC) 981** as well as **Satender Kumar Antil vrs. Central Bureau of Investigation** (Miscellaneous Application No.1849 of 2021 in Special Leave Petition (Crl.) No.5191 of 2021 disposed of on 11th July, 2022),

shall consider and dispose of the bail application of the Petitioner.

8. Till the aforesaid date, i.e. either the date of appearance before the trial court or on expiry of four weeks, whichever is earlier, the Petitioner shall not be arrested pursuant to the N.B.W.(A) issued.

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

PKS

