

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.11437 of 2021

Khara Balaram @ K.Balaram

....

Petitioner

M/s.R.L.Patnaik, Advocate

-versus-

State of Orissa

....

Opp. Party

M/s.P.K.Patnaik, A.G.A.

CORAM:

JUSTICE G. SATAPATHY

ORDER

27.10.2022

Order No.

- 05.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. Mr.Rajib Lochan Patnaik and associates, learned counsels enter appearance for the petitioner. The name of Mr.Jugal Kishore Panda, learned counsel be deleted from the brief as submitted by learned counsel appearing earlier for the petitioner.
 3. This is an application U/S. 439 of Cr.P.C. by the Petitioner for grant of bail in connection with Chitrakonda P.S. Case No.46 of 2021 corresponding to Special G.R. Case No.48 of 2021 pending in the Court of learned Sessions Judge -cum-Special Judge, Malkangiri for commission of offence punishable U/Ss. 20(b)(ii)(C) and 25 of NDPS Act on the allegation of possessing 1715Kgs. 700 grams of contraband Ganja in the house of co-accused Dhana Khilla for the purpose of transportation to suitable places.
 4. In the course of hearing of the bail application, Mr.Rajib Lochan Patnaik, learned counsel for the petitioner submits that the petitioner was neither apprehended from the spot nor was present in the house of Dhana Khilla and therefore, even if the recovery of contraband Ganja is taken to be true from the house of one co-accused Dhana Khilla, the provision of Section 37 of N.D.P.S. Act could not be attracted against the petitioner so as to deny him bail in this case. It is further submitted that co-accused

Jitendra Pangi and Ganesh Khara have already been granted bail by this Court and, therefore, the petitioner having detained in custody substantially, may kindly be enlarged on bail.

5. On contrary, learned counsel for the State by placing the statement of witnesses Surya Prakash Naik and Dhana Khara submits that the petitioner was in exclusive possession of contraband Ganja and, therefore, Section 37 of N.D.P.S. Act would operate as a bar for release of petitioner on bail in this case.

6. After having considered the rival submissions advanced for the parties upon reference to the allegations on record, there appears allegation of recovery and seizure of 1715Kgs. 700 grams of contraband Ganja from the house of one Dhana Khilla and there appears further allegation against the petitioner for possessing the contraband Ganja in the aforesaid house. Further, the statement of witness Dhana Khara also reflects allegation against the present petitioner for possessing the contraband Ganja. The contraband Ganja seized in this case is definitely coming under commercial quantity and Section 37 of N.D.P.S. Act would operate as a bar for release of petitioner on bail as he has failed to satisfy the twin conditions enumerated in Section 37 of N.D.P.S. Act. It is no doubt true that co-accused persons have been granted bail but such orders granting bail to co-accused persons having been passed without reference to Section 37 of the N.D.P.S. Act does not enure to the benefit of the petitioner in view of the law laid down by the Apex Court in *Narcotics Control Bureau Vrs. Mohit Agarwal; 2022 SCC Online SC 891*.

7. Considering the nature and gravity of offences and the quantity of contraband Ganja seized in this case to the tune of 1715Kgs. 700 grams and the law laid down in *Mohit Agarwal(supra)* and taking into consideration the observation of the Apex Court in *State of Kerala Vrs. Rajesh and another; (2020)78 OCR (SC) 65* and other circumstance of the case, this Court considers it undesirable to release the petitioner on

bail. Accordingly, the prayer for bail of the petitioner stands rejected.

8. At this point, learned counsel for the petitioner prays for grant of liberty to the petitioner to approach this Court after examination of the informant. It is needless to say that the petitioner is at liberty to renew his prayer for bail after examination of the informant.

9. Accordingly, the BLAPL stands disposed of.

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

Kishore

*(G. Satapathy)
Judge*

