

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.11494 of 2021

Punam Devi @ Poonam Devi ***Petitioner***

Mr. A.P. Bose, Advocate

-versus-

State of Odisha ***Opposite Party***

Mr. M. Mishra, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

22.06.2022

Order No.

02.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard A.P. Bose, learned counsel for the petitioner and Mr. M. Mishra, learned counsel for the State. Perused the F.I.R., case diary and other relevant documents as well as statement of the witnesses.
3. This is an application under Section 439 of the Criminal Procedure Code for bail arising out of R. Udayagiri P.S. Case No.35 of 2021 corresponding to G.R. No.50 of 2021 pending in the court of learned Special Judge-cum-Sessions Judge, Gajapati, Paralakhemundi for commission of offences punishable under Sections 20(b)(ii)(C)25/29 of the N.D.P.S. Act.
4. The prosecution case, in brief, is that the S.I. of Police R. Udayagiri P.S., namely one Mukesh Lakra lodged plain paper F.I.R. inter alia alleging that he along with some other police officers while

conducting patrolling duty on 05.03.2021 on suspicion intercepted and stopped one Scorpio vehicle bearing Registration No. UP-65-BE-2777 near village Kuanpada. On search, the police team recovered four numbers of plastic jerry bags containing 131 Kgs. 700 grams of contraband ganja, which has been illegally transported in the vehicle in question.

5. Learned counsel for the petitioner submits that the petitioner, who is a lady and having two small kids to lookafter, is in custody since 06.03.2021. The Investigating Officer concluded investigation and charge-sheet has been submitted. He further submits that the petitioner was a co-passenger in the said vehicle and was travelling along with her two children. It is further submitted that the petitioner had no knowledge that the alleged contraband ganja were kept in the vehicle and as such, he submits that the recovery of contraband ganja was not within the exclusive and conscious possession of the petitioner, who was only co-passenger in the said vehicle. It is further submitted by learned counsel for the petitioner that husband of the petitioner, who was also travelling on the very same vehicle has been arrested and is in custody.

6. Learned counsel for the petitioner further submits that the bail application of the petitioner was rejected by the leaned Special Judge-cum-Sessions Judge, Gajapati, Paralakhemundi on the ground that the investigation of the case is continuing and the release of the petitioner at that stage would adversely affect the progress of the investigation. However, in the meantime, investigation has been concluded and the charge-sheet has been filed. It is further submitted by learned counsel for the petitioner that the petitioner is in custody since 06.03.2021 along with her two minor innocent children. It is

further submitted by learned counsel for the petitioner that the petitioner being a lady and co-passenger of the vehicle and having no knowledge about the contraband articles were kept in the vehicle in which she was travelling and therefore, her case needs to be considered sympathetically by this Court. Further, he submits that there is no chance of absconding or fleeing away from the hands of justice and in the event of her release, she will appear before the trial court on each date of posting of the case and shall abide by the terms and conditions that may be imposed by this Court. It is also submits that Section 37 of the N.D.P.S. Act is not applicable to the fact of the present case.

7. Learned counsel for the petitioner further submits that the mandatory requirement of NDPS Act has not been complied with while arresting the petitioner in connection with the present case. He further submits that since the contraband ganja recovered by the police was not within the exclusive and conscious possession of the present petitioner, the bar under Section 37 is not applicable to the present case.

8. Learned counsel for the State vehemently opposes the prayer for bail of the petitioner and submits that innocence of the petitioner can only be established during trial. Further, it is submitted that the illegal trafficking of contraband articles are rising day-by-day in the State of Odisha and no leniency should be shown to the petitioner or any other accused found guilty in such offences. He further submits that the husband of the petitioner, who was also travelling with the present petitioner, has also been arrested and he is in custody. In such view of the matter, learned counsel for the State urges that the bail application of the petitioner may be rejected at this juncture.

9. Having heard learned counsel for the parties and upon perusal of the case diary as well as materials placed on record and taking into consideration the facts and circumstances of the present case and the nature and gravity of the alleged offence and the fact that the petitioner is a lady and she is in custody along with her two minor children since more than one year and the chance of early conclusion of the trial is very bleak, I am inclined to release the petitioner on bail and it is directed that let the petitioner be released on bail in the aforesaid case on furnishing 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. Further, learned court in seisin over the matter is at liberty to impose any other conditions as would be deemed just and proper. However, while fixing the terms and conditions, the court in seisin over the matter shall ensure that the appropriate conditions are imposed for attendance of the accused at the time of trial.

10. With the aforesaid observations, the Bail Application stands disposed of.

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

(A.K. Mohapatra)
Judge