

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.11668 of 2021

Arif Ansari

.... ***Petitioner***
M/s. S.Rout, Advocate

-versus-

State of Orissa

.... ***Opp. Party***
M/s. P.K.Patnaik, A.G.A.

CORAM:

JUSTICE G. SATAPATHY

ORDER

27.10.2022

I.A. No. 1686 of 2022

Order No.

04. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. The present Interlocutory Application has been filed to recall the order passed on 07.09.2022 in BLAPL No. 11668 of 2021.
3. Learned counsel for the petitioner submits that the aforesaid brief was received on transfer and accordingly the conducting counsel filed Vakalatnama on 16.08.2022 but unfortunately when the case was listed on 07.09.2022 the name of learned conducting counsel Mr.S.S.Ray was not reflected in the cause list for which the conducting counsel could not appear in the matter and as no instruction was submitted by the earlier conducting counsel in the Court, the present bail application was dismissed for want of instruction.
4. Learned counsel for the State is present and opposes the prayer of the petitioner.
5. In view of the aforesaid submissions and taking into consideration the grounds advanced by the petitioner in the Interlocutory Application, the order passed by this Court on 07.09.2022 is recalled and the present bail application is restored to file.
6. Accordingly, the I.A. stands disposed of.

(G. Satapathy)
Judge

P.T.O.

BLAPL NO. 11668 of 2021

05. 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 Adava P.S. Case No.97 of 2021 corresponding to G.R. Case No.100 of 2021 pending in the Court of learned Special Judge, Gajapati for commission of offence punishable U/Ss. 20(b)(ii)(C) and 25/29 of NDPS Act read with Sections 468/471 of I.P.C. on the allegation of transporting 65 Kgs. 600 grams of contraband Ganja in a Maruti Suzuki Wagon R bearing Registration No. HR26AS-1097.
3. In the course of hearing of the bail application, Mr.Satyajit Rout, learned counsel for the petitioner submits that the petitioner is no way connected with transportation of contraband Ganja and he was not aware of any contraband Ganja being carried in the said vehicle since the petitioner was driving the vehicle under the direction of his owner. Learned counsel for the petitioner further submits that co-accused Lalu Prasad Baliarsingh has already been granted bail by an order passed on 09.05.2022 by this Court in BLAPL No. 10008 of 2021 and the petitioner therefore, may kindly be released on bail.
4. Learned counsel for the State in reply submits that the quantity of contraband Ganja seized in this case is coming under commercial quantity and in view of the law laid down by the Apex Court in ***Narcotics Control Bureau Vrs. Mohit Agarwal; 2022 SCC Online SC 891***, the petitioner cannot be released on bail in view of the fact that the order granting bail was passed without reference to Section 37 of the N.D.P.S. Act.
5. After having considered the rival submissions advanced for the parties upon reference to the allegations on record, there appears allegation against the petitioner for driving the Maruti Suzuki Wagon R LXI car bearing Registration No. HR26AS-1097 allegedly carrying contraband

Ganja to the tune of 65 Kgs. 600 grams which is definitely coming under commercial quantity. There is no denying to the provisions of law that for release of person accused of offences involving commercial quantity of contraband articles on bail, the Court has to record satisfaction about fulfillment of the twin conditions enumerated in Section 37 of N.D.P.S. Act and in this case the petitioner does not satisfy the aforesaid twin conditions.

In view of the above facts and taking into consideration the nature and gravity of the offence alleged against the petitioner and keeping in view the mandate of Section 37 of the N.D.P.S. Act and the law laid down by the Apex Court in *Mohit Agarwal(supra)*, the petitioner cannot be granted bail even on the principle of parity. Hence, the prayer for bail of the petitioner stands rejected.

6. Accordingly, the BLAPL stands disposed of.
7. Urgent certified copy of the order be granted on proper application.

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(*G. Satapathy*)
Judge

Kishore