

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 3158 of 2023

Mithun Sarkar

....

Petitioner

Mr. R.L. Pattnaik, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. P.C. Das, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

20.04.2023

Order No.

- 01.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. Heard learned counsel for the Petitioner and 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.
 4. The Petitioner is an accused in Special G.R. Case No.64 of 2023 arising out of Kalimela P.S. Case No.51 of 2023 pending in the court of learned Sessions Judge-cum-Special Judge, Malkangiri for commission of offence punishable under Sections 20(b)(ii)(C) & 27-A of the N.D.P.S. Act.
 5. It is submitted by learned counsel for the Petitioner that the Petitioner along with another pillion rider namely Raju Khila were

travelling by a Hero Honda Glamour Motor Cycle bearing Regd. No.AP 20 AC 2909. They stopped by police patrolling party on 28.02.2023. They were arrested from the spot while carrying contraband Ganja. Further verification of the F.I.R., it appears that Ext.A of seized contraband articles relates to the vehicle in which the Petitioner was travelling i.e. AP 20 AC 2909 and a total quantity of 15 kgs 200 gms Ganja were recovered from their possession.

6. Learned counsel for the Petitioner further contended that considering such quantity of Ganja seized from the possession of the Petitioner, the same is less than the commercial quantity. Accordingly, the bar under Section 37 NDPC Act is not attracted in the present case. If that being so the Petitioner be released on bail subject to any terms and conditions as would be deemed fit and proper. It was also contended that the Petitioner does not have any similar criminal antecedent.

7. Leaned Additional Standing Counsel for the State vehemently opposes the prayer for bail of the Petitioner and submits that illegal trafficking of contraband articles is rising day-by-day and no leniency should be shown to the petitioner or similarly situated persons. Moreover, the release of the Petitioner at this juncture which affect the early conclusion of the trial adversely. In such view of the matter, learned Addl. Standing Counsel submitted that the bail application filed by petitioner be rejected at this juncture.

8. Considering such submission made by learned counsels appearing for the parties and a conspectus of the surrounding facts and circumstances as well as materials placed before this Court, this Court observed that the quantity of 15 kg 200 gms of Ganja were

recovered from the possession of the Petitioner who was travelling in the vehicle bearing Regd. No.AP 20 AC 2909. Considering the quantity of the ganja recovered from the possession of the Petitioner and the same is below the commercial quantity as prescribed under statute the bar under Section 37 is not attracted to the facts of the present case. Further, taking into consideration the period of detention in custody as well as the fact that the Petitioner is not involved any similar nature of offences, this Court is inclined to release the Petitioner on bail on furnishing a bail bond of Rs.30,000/- (rupees thirty thousand) with two local solvent sureties each for the like amount to the satisfaction of the learned court in seisin over the matter subject to terms and conditions to be fixed by the learned court in seisin over the matter as would be deemed fit and proper in the facts and circumstance of the present case.

9. It is further directed that the bail granted to the Petitioner is subject to the condition that learned court below shall verify whether the Petitioner has any criminal antecedents of similar nature. In the event it is found that the Petitioner has any criminal antecedents of similar nature, this bail order shall automatically stand revoked.

10. The Bail Application is accordingly disposed of.

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

(A.K. Mohapatra)
Judge

Anil