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(2024) 01 OHC CK 0003

In the Orissa High Court

Case No : Bail Application No. 3875 Of 2023

Laxmidhar Swain @ Kalu Vs State Of Odisha ?

Date of Decision : 05-01-2024

Acts Referred:
Code of Criminal Procedure, 1973 — Section 439
Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 21(C), 29, 37(1)(b)(ii)

Citation : (2024) 01 OHC CK 0003

Hon'ble Judges : V. Narasingh, J

Bench : Single Bench

Advocate : N.K. Lenka, T.K. Praharaj

Final Decision : Disposed Of

Judgement

V. Narasingh, J

1. Heard learned counsel for the Petitioner and learned counsel for the State.

2. The Petitioner is an accused in connection with T.R. Case No.46 of 2022 pending in the Court of learned 1st Addl. Sessions Judge-cum-Special Judge under N.D.P.S Act, Khordha, arising out of S.T.F., BBSR P.S Case No.11 of 2022, for commission of alleged offence under Section 21(C)/29 of the N.D.P.S. Act.

3. Learned counsel, on instruction, submits that except the present BLAPL, no other bail application of the Petitioner relating to the aforementioned P.S. Case is pending in any other Court.

4. Being aggrieved by the rejection of his application for bail U/s.439 Cr.P.C. by the learned Special Judge under NDPS Act, Khurda by order dated 15.03.2023 in the aforementioned case, the present BLAPL has been filed.

5. It is submitted by the learned counsel that the Petitioner is in custody since 12.05.2022 and the accusation against him is that he along with the co-accused are in possession of contraband to the tune of 1Kg 42gms (Brown Sugar).

6. Referring to the deposition of the witnesses, it is submitted by the learned

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counsel for the Petitioner that it cannot be said that the Petitioner is in conscious and exclusive possession of the contraband.

7. The statements of P.Ws.1 to 4 have been placed on record and on perusal of the same, it is seen that P.Ws.2 to 4 have not supported the prosecution.

8. This Court perused the Statement of P.W.1 more particularly paragraph-2 thereof.

9. Since the said witness has also not supported the prosecution, it is submitted by the learned counsel that further continuance of the Petitioner in custody is punitive.

10. Per contra, learned counsel for the State submits that there are other independent witnesses who are yet to be examined. Hence, it is not open for the Court to evaluate the materials on record at this stage.

11. Considering the nature of accusation, manner of seizure and keeping in view the rigors of Section 37(1)(b)(ii) of NDPS Act, this Court is not inclined to entertain the bail application at this stage.

12. It is needless to state here that the observations made herein are only for the purpose of consideration of bail and ought not to be understood as this Court expressing any opinion regarding the complicity of the petitioner and the same has to be adjudicated independently in the impending trial.

13. Since the Petitioner is stated to be in custody from 12.05.2022, learned Court in seisin is requested to conclude the trial expeditiously.

14. Learned counsel for the State is requested to impart necessary instructions to ensure the presence of the witnesses on the date fixed.

15. Copy of this order be made over to the learned counsel for the State enabling him to make necessary follow up action.

16. Accordingly, the BLAPL stands disposed of.

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