

(2024) 03 OHC CK 0207
In the Orissa High Court
Case No : Bail Application No. 11988 Of 2023

Shri Niwas Rao

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 28-03-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 317, 439
Narcotics Drugs and Psychotropic Substances Act, 1985 — Section 20(b)(ii)(C), 27A, 37

Citation : (2024) 03 OHC CK 0207

Hon'ble Judges : Savitri Ratho, J

Bench : Single Bench

Advocate : M. Nandy, S.S. Mohapatra

Final Decision : Disposed Of

Judgement

Savitri Ratho, J

1. This application under Section 439 of the Cr.P.C. has been filed in connection with Chitrokonda P.S. Case No.128 of 2023 corresponding to Special G.R. Case No.151 of 2023, pending in the file of the learned Sessions Judge-cum-Special Judge, Malkangiri, where charge sheet dated 27.12.2023 has been submitted against the present petitioner- Shri Niwas Rao, co-accused Kadiri Santhara Rao, Prakash and Hari Khemudu under Sections 20 (b) (ii) (C) & 27-A of the NDPS Act.
2. This application has been listed before me as BLAPL No. 10875 of 2023 filed by co-accused Hari Khemudu has been disposed of by me on 09.10.2023.
3. The prayer for bail of the petitioner has been rejected on 12.09.2023 by the learned Sessions Judge-cum-Special Judge, Malkangiri.
4. The prosecution allegation against the petitioner in brief is that on 11.07.2023, the IIC of Chitrakonda Police Station while performing patrolling duty in Chitrakonda market area received reliable information that three persons carrying three carry bags containing ganja were standing at the Bus stand

waiting to avail bus for transportation. When he reached the spot at about 11.40 A.M., he found the three persons carrying three carry bags and on being questioned, they gave their names are Prakash, Kadir Santhara Rao, Shri Santhara Rao and and Shri Niwas Rao and stated that the ganja has been supplied by co-accused Hari Khemudu for transporting to Haryana by Bus. The bags were found to contain 45 kg. 500 grams of ganja. It is stated that the the present petitioner Shri Niwas Rao, co-accused, Prakash, Kadir Santhara Rao and were carrying one bag each and each bag was found to contain 3 packets each containing 5 kg. 100 grams of ganja. The bags were opened and its contains mixed together to make an homogenous mixture and re-pack again and two bags each weighing 22 kg. 850 grams after drawing sample. As the co-accused persons could not produce any authority for possession or transportation of ganja, the ganja was seized and they have been arrested.

5. Mr. M. Nandy, learned counsel for the petitioner submits that the petitioner is in custody since 11.07.2023, he does not have any criminal antecedents and investigation has been completed in the meanwhile. He further submits that in view of the quantity of ganja seized from the petitioner which is around 15 kgs. 300 grams, Section 37 of the NDPS Act will not be a bar for considering his prayer for bail and that co-accused Hari Khemudu has been granted bail by this Court in BLAPL No. 10875 of 2023 and co-accused Kadiri Santhara Rao has been granted bail by this Court in BLAPL No. 11952 of 2023. He further submits that the chemical examination report has not been filed along with charge sheet.

6. Mr. S.S. Mohapatra, learned Additional Standing Counsel opposes the prayer for bail stating that the petitioner is a resident of Haryana for which it will difficult to secure his presence during trial if he is released on bail. He further submits that co-accused Hari Khemudu who has been released on bail stands on a different footing than the petitioner as the basis of his implication was the statement of the present petitioner and the other accused. He finally submits that since the petitioner and the accused persons were standing together, hence total quantity of ganja recovered from them has to be taken into account i.e. 45 kg. 300 grams for which Section 37 of the NDPS Act will be a bar for releasing the petitioner on bail. He further submits that though the antecedents of the petitioner had been called for from Haryana, information has not yet been received.

7. Considering the allegations against the petitioner that he was standing with one bag and the said bag was allegedly found to contain 3 packets of 5 kg. 100 grams of ganja total weight 15 kgs.300 grams, and the submission of the learned counsel for the petitioner that the petitioner does not have any criminal antecedents and as investigation has been completed in the meanwhile, I am inclined to allow the prayer for bail of the petitioner.

8. The petitioner – Shri Niwas Rao shall be released on bail on such terms and conditions as may be fixed by the learned Court below in seisin over the matter, subject to verification that he has no criminal antecedents in Odisha and

Haryana, including the following conditions:

- (i) He will not indulge in any criminal activity while on bail.
- (ii) He will not threaten or try to influence prosecution witnesses while on bail.
- (iii) He shall furnish cash surety of Rs.7500/-.
- (iv) He will furnish his mobile number, copy of his Aadhaar Card and permanent address in Haryana to the Court, and which shall be verified by the I.I.C. of Chitrokonda Police Station before he is released on bail.
- (v) He will remain present on each date fixed for trial subject to any order passed by the learned trial Court under Section 317 Cr.P.C.
- (vi) He shall not leave District- Malkanagiri without prior permission of the learned trial Court after the trial starts.

9. Violation of any condition will entail in cancellation of bail/recall of this order.

10. The BLAPL is accordingly disposed of.

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

12. Copy of this order be supplied to Mr. S.S. Mohapatra, learned Additional Standing Counsel for onward transmission to the IIC, Chitrokonda Police Station..

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