

(2024) 04 OHC CK 0016

In the Orissa High Court

Case No : Bail Application No. 917 Of 2024

Sibalu Tukuna Dora @ S.Tukuna Dora

APPELLANT

Vs

State Of Orissa

RESPONDENT

Date of Decision : 03-04-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 439

Narcotics Drugs and Psychotropic Substances Act, 1985 — Section 20(b)(ii)(C), 37

Citation : (2024) 04 OHC CK 0016

Hon'ble Judges : G. Satapathy, J

Bench : Single Bench

Advocate : S.Parida, B.K.Ragada

Final Decision : Disposed Of

Judgement

G. Satapathy, J

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. This is a bail application U/S.439 of Cr.P.C. by the petitioner for grant of bail in connection with Digapahandi P.S. Case No. 45 of 2023 corresponding to G.R. Case No.06 of 2023(N) pending in the file of learned Sessions Judge-cum-Special Judge, Ganjam, Berhampur for commission of offences punishable under Sections 20(b)(ii)(C) of the NDPS Act on the allegation of transporting 42Kgs and 700 Grams of Contraband Ganja in a Honda Activa-5G Scooty bearing Regd. No. OD-07-AB-2075 along with co-accused person.
3. In the course of hearing, Ms.Debashri Parida, learned counsel appearing for the petitioner by drawing attention of the Court to the affidavit stated to be sworn in by the wife of the petitioner, submits that no bail application of the petitioner is pending before any other forum. She further submits that co-accused standing on similar footing has already been granted bail, but the petitioner is languishing in jail custody since 31.01.2023 and the trial is yet to be concluded. Accordingly, Ms. D. Parida prays to grant bail to the Petitioner by

taking into consideration above facts. On the other hand, Mr.B.K. Ragada, learned AGA, however, prays to reject the bail application of the petitioner on the ground that the petitioner has failed to satisfy the Court the conditions of Sec. 37 of NDPS Act as the quantity of Contraband substance is more than commercial quantity.

4. It is brought to the notice of the Court that by the time the bail application of the petitioner was rejected by the Court in seisin of the case, only 03 out of 15 charge sheeted witnesses have been examined and the petitioner has been detained in custody since 31.01.2023. The quantity of Contraband Ganja allegedly seized in this case is coming under commercial quantity and, therefore, normally Sec. 37 of NDPS Act would be attracted in such situation, but it is not known as to when the trial would be concluded. However, it is presumed that the trial would take some more time to be concluded. In such situation, especially when no criminal antecedent of the Petitioner has been brought to the notice of this Court and taking into consideration the pre trial detention of the Petitioner in custody for more than a year and two months, this Court is, however, satisfied that the conditions of Sec. 37 of NDPS Act may be dispensed with at this stage.

5. For the reasons stated herein above and taking into consideration the pre trial detention of the Petitioner in custody and release of co-accused Dalabehera Santosh Dora @ D.Santosh Dora on bail in BLAPL No. 3806 of 2023, this Court admits the Petitioner to bail.

6. Hence, the bail application of the petitioner stands allowed and the petitioner is allowed to go on bail on furnishing bail bonds of Rs.1,00,000/- (Rupees One Lakh) only with two solvent sureties each for the like amount to the satisfaction of the learned Court in seisin of the case on such terms and conditions as deem fit and proper by it with following conditions:-

- (i) the petitioner shall not commit any offence while on bail,
- (ii) the petitioner in the course of trial shall attend the trial Court on each date of posting without fail unless his attendance is dispensed with. In case the Petitioner fails without sufficient cause to appear in the Court in accordance with the terms of the bail, the learned trial Court may proceed against the Petitioner for offence U/S.229-A of IPC in accordance with law,
- (iii) the petitioner shall not leave the territorial jurisdiction of the trial Court without prior permission till disposal of the case by intimating his present address of stay,
- (iv) the petitioner shall report attendance before the Jurisdictional Police Station once in a fortnight preferably on 2nd Sunday of each month in between 10 A.M. to 12 Noon for three (03) months from the actual date of release from the custody.

The I.I.C. of Jurisdictional Police Station shall not detain the petitioner unnecessarily after recording his attendance beyond the time as stipulated.

It is clarified that the Court in seisin of the case will be at liberty to cancel the bail of the petitioner without further reference to this Court, if any of the above conditions are violated or a case for cancellation of bail is otherwise made out. In the wake of aforesaid, the subsequent involvement of the petitioner in future any offence under NDPS Act on prima facie accusations may be treated as a ground for cancellation of bail in this case.

7. Accordingly, the BLAPL stands disposed of.

8. Issue urgent certified copy of the order as per Rules.

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