

IN THE COURT OF ASSISTANT SESSIONS JUDGE,
BASUDEVPUR, DISTRICT- BHADRAK.

Present: Sri Pravuram Das Adhikari, LL.B.,
Assistant Sessions Judge, Basudevpur.

Bail Application No. 182 of 2022

Prafulla Ghadei, aged about 45 years,
S/o. late Purna Chandra Ghadei,
Vill.- Sudarsanpur, P.O.- Suan,
P.S.- Basudevpur, Dist.- Bhadrak.

... Accused-petitioner.

- VERSUS -

State of Odisha

...

Opposite Party.

ORDER

(Under Sec. 439 of Cr.P.C.)

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1) The accused-petitioner named above has filed this application U/s. 439 of Cr.P.C. with the prayer to admit him into bail since he is in custody after rejection of his bail vide order dated 29.09.2022 passed by the learned J.M.F.C., Basudevpur in 2(a)C.C. case No. 221 of 2022, arising out of P.R. No.88 of 2022-23 dated 28.09.2022 of O.I.C. Basudevpur Excise Station, Basudevpur registered U/s. 52(a) of Odisha Excise Act-2008 which is now pending in the Court of the learned J.M.F.C., Basudevpur. The learned counsel for the petitioner filed a certificate that no bail application for the similar matter is pending before any other Court.

2) Heard from both the sides. The case of the prosecution as revealed from the documents available on record, that on 28.09.2022 at about 05.30 P.M. the informant, O.I.C. Basudevpur Excise Station, Basudevpur along with others while performing patrolling at Badeipada area under Basudevpur P.S. found the accused-petitioner carrying one white colour plastic bag containing

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4 nos. of polythene packets each packet containing 5 liters in total 20 liters of I.D.liquor as per liter measure and excise test and experience. The accused could not produce any valid license or authority for such possession of I.D. liquor. Thereafter a case has been registered U/s. 77 of the Odisha Excise Act, 2008 vide P.R. No. 88/2022-23 dated 28.09.2022 and the accused-petitioner has been forwarded on arrest to the Court of learned J.M.F.C., Basudevpur on 29.09.2022 and on the same day his bail application has been rejected by the learned J.M.F.C., Basudevpur, which has occasioned the petitioner to prefer the present application.

3) It is submitted by the learned counsel for the accused-petitioner that the accused-petitioner is a poor, innocent and no way connected with the alleged crimes. That the petitioner is a permanent inhabitant in above noted address, so there is no chance of his absconding, if he will be released on bail. That the petitioner is the only earning member of his family, if he will not be released on bail, his family members shall be put in starvation. That the petitioner is a law abiding person who under takes to abide by all conditions, if be imposed, to release him on bail.

To the contrary, the learned Addl.P.P. for the State formally opposed to the release of the accused-petitioner on bail.

4) Perused the case record in 2(a)CC No. 221 of 2022, wherein the O.I.C. Basudevpur Excise Station, Basudevpur has forwarded the present accused-petitioner for the allegation U/s. 52(a) of the Odisha Excise (Amendment) Act, 2008. Upon hearing the counsels and on perusal of the documents on record including P.R. This offence is punishable neither with death penalty nor with imprisonment for life and triable by Magistrate First Class. There is no smelling of criminal antecedent against the accused-petitioner

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as revealed on perusal of the case record. It appears that the present accused-petitioner is the resident under the jurisdiction of this Court. In the instant case, the petitioner is inside the judicial custody since 29.09.2022. Nevertheless a substantial period of detention inside the custody to make him realise the rigours of law. Furthermore the I.O. is found not to have mentioned the reason for non-service of notice U/s. 41(A) of Cr.P.C. as mentioned in the check list as agitated by the learned counsel for accused-petitioner.

In view of the above facts and circumstances of the case nature and gravity of the offence, degree of punishment, residential status and his detention inside the jail custody and considering the quantum of liquor and dependency of his family members upon him, I am of the opinion that this is a fit case to release the accused-petitioner on bail by imposing stringent conditions, balancing his individual liberty in one hand and the prosecution interest as well as the social impact on the other where the former one leans towards the accused-petitioner.

5) Accordingly the prayer for bail vide petition filed U/s. 439 of Cr.P.C. on behalf of the accused-petitioner **Prafulla Ghadei** is hereby allowed. Hence it is ordered.

ORDER

Let the accused-petitioner **Prafulla Ghadei** be released on bail on furnishing bail bond of Rs. 20,000/- (Rupees twenty thousand only) with one fit and solvent surety for the like amount to the satisfaction of the learned J.M.F.C., Basudevapur with the following conditions:

- I. That he shall not involve himself in the commission of similar type of offence;

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- II. that he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of this case so as to dissuade him from disclosing such facts to the Court or tamper with the evidence; and
- III. he shall appear as and when required by the Court.

Violation of any of these conditions would amount to automatic cancellation of their bail without further notice to him.

Before parting, it is worthy to mention that the above observations and discussions have been made only for adjudication of this bail application and the same shall have no bearing upon the trial Court.

The petition is disposed of accordingly. Send back the L.C.R. to the Court of learned J.M.F.C., Basudevpur along with copy of this order forthwith.

Computerised to my dictation
and corrected by me.

Assistant Sessions Judge,
Basudevpur.

Assistant Sessions Judge,
Basudevpur.