

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.153 of 2021

Hemanta Kumar Naik @ Mithun **Appellant/
Petitioner**

Mr. K.A. Ananda, Advocate

-versus-

State of Odisha **Respondent/
Opp. Party**

Ms. Susamarani Sahoo,
Addl. Standing Counsel

CORAM:

JUSTICE S.K. SAHOO

ORDER

07.02.2022

I.A. No.298 of 2021

Order No.

06. This matter is taken up through Hybrid Arrangement (Video Conferencing/Physical Mode).

This is an application under Section 389 of Cr.P.C. for grant of bail.

Heard.

Heard learned counsel for the appellant-petitioner and learned counsel for the State.

The appellant-petitioner has been convicted under section 20(b)(ii)(C) of the N.D.P.S. Act and sentenced to undergo R.I. for a period of ten years and to pay a fine of Rs. 1,00,000/- (rupees one lakh), in default, to undergo further R.I. for a period of one year by the learned 2nd Addl. Sessions Judge,

Berhampur in 2(a)C.C. Case No.04 of 2018 (N).

Learned counsel for the appellant submitted that the appellant was on bail during trial and he has never misutilised his liberty. It is further submitted that the independent witness i.e. P.W.3 has not supported the prosecution case and other two independent witnesses i.e., P.W.1 and P.W.2 have not stated anything relating to the possession of the contraband ganja with the appellant. It is further submitted that on the basis of the evidence of the two official witnesses i.e., P.W. 4 and P.W.5, the order of conviction has been passed. The ganja in question was recovered from dickey of the vehicle which the petitioner was driving and since there is no chance of early hearing of the appeal in the near future, the bail application of the appellant may be favourably considered.

Learned counsel for the State, on the other hand submitted that P.W.2 is the owner of the offending vehicle and he has given the vehicle to the appellant for driving purpose and P.W.1 has also stated that the appellant was the driver of the vehicle. Learned counsel for the further State submitted that the official witnesses have stated about the recovery of the contraband ganja of commercial quantity from the dickey of the vehicle and in view of the bar under section 37 of the N.D.P.S. Act the appellant is not entitled to be released on bail.

Considering the submissions of learned counsel for the respective parties, nature of evidence available on record and since the learned counsel for the appellant is unable to overcome the bar under section 37 of the N.D.P.S. Act, I am not inclined to release the petitioner on bail.

Accordingly, the I.A. stands dismissed.

(S.K. Sahoo)
Judge

I.A. No.299 of 2021

07.

Heard.

There shall be stay of realization of fine amount imposed by the learned trial Court on the appellant-petitioner till disposal of the criminal appeal.

The I.A. is disposed of.

Issue certified copy as per rules.

p

(S.K. Sahoo)
Judge