A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.7354 of 2022

Sk. Jumman @ Badruddin .... ***Petitioner***

-versus-

State of Odisha .... ***Opposite Party***

For Petitioner : Mr. R. Sarangi, Advocate

For Opposite Party : Mr. K.K. Gaya, ASC

CORAM: JUSTICE V. NARASINGH

Date of hearing : 20.12.2022

Date of judgment: 05.01.2023

V. Narasingh, J.

1. Heard Mr. R. Sarangi, learned counsel for the Petitioner and Mr. K.K. Gaya, learned Addl. Standing Counsel.

2. The Petitioner is an accused in connection with T.R No.28 of 2021 pending in the court of learned 2nd Addl. Sessions Judge, Khurda, arising out of S.T.F. P.S. Case No.15 of 2021 for commission of the alleged offence under Section 21(c)/29 of the N.D.P.S Act.

3. Being aggrieved by the rejection of his application for bail U/s. 439 Cr.P.C. by the learned 2nd Addl. Sessions Judge, Khurda by order dated 06.07.2022, the present BLAPL has been filed.

4. This is the second journey of the Petitioner to this Court. The Petitioner's earlier bail application i.e. BLAPL No.4463 of

2021 was disposed of on 5.4.2022 as withdrawn as he does not want to press the same.

5. The allegation of the prosecution is that the Informant in the case at hand got an information from a reliable source on 23.04.2021 at 12 noon that one Sri Bijay Mohanty and his associates were planning to deliver contraband (brown sugar) to the customers near Barunei Hotel, Khurda and she reported the matter to the S.P., S.T.F., C.I.D., C.B., Odisha, Bhubaneswar. On the basis of the said information, S.T.F. P.S. Station Diary Entry No.05 dated 23.04.2021 was made and she was directed to proceed along with police squad and witnesses to the spot for investigation. They reached the spot at about 4.45 P.M and arrested accused Bijay Mohanty. On her requisition, Tahasildar, Khurda reached the spot and on personal search, the contraband weighing 1 Kg. 50 Grams of brown sugar was seized from the possession of the accused Bijay Mohanty.

6. The said accused Bijay Mohanty disclosed the name of the present Petitioner as one who sold the contraband to him at Rs.5,30,000/- and stated that on 23.04.2021 morning the Petitioner and two others namely Soumyajit Parija and Sagar Behera came in a Baleno Maruti Car bearing registration number OD-33-T-9920 being driven by Sapan Bhattacharya of Jagatsinghpur and handed over the brown sugar packet to him. He further stated that they are habitual drug peddlers and he used to receive drugs from them at regular intervals for selling at Khurda, Bhubaneswar, Cuttack and Puri areas. It was further stated by co-accused Bijay Mohanty that he received the said bulk quantity of brown sugar from the

Petitioner in lieu of Rs.5,30,000/- paid to him. He also stated that he promised the Petitioner to pay rest amount after selling the brown sugar.

7. On such information received from co-accused Bijay Mohanty, a team was deputed to Balasore and on the way, they could get a clue regarding the vehicle and they accosted the Petitioner and other accused and from the possession of the Petitioner cash of Rs.5,30,000/- was recovered and the Baleno Maruti Car which was specifically mentioned by co-accused Bijay Mohanty was seized from the possession of co-accused Soumyajit Parija in the presence of witnesses.

8. On verification of criminal antecedent of the Petitioner, it was found that the Petitioner is involved in Jaleswar P.S. Case No.165 of 2005 under Sections 379/34 IPC.

9. Learned counsel for the Petitioner Sri Sarangi submitted that in the meanwhile co-accused persons, namely, Soumyajit Parija, Sagar Ranjan Behera and Sapan Bhattacharya, who are more or less similarly circumstanced have been released on bail. As he is in custody since 24.04.2021 and charge sheet having been filed on 18.10.2021, his further incarceration is not warranted and in fact punitive.

10. Learned counsel for the State Sri Gaya opposing the prayer for bail submitted that since this Court was not inclined to entertain the bail application of the Petitioner earlier, the Petitioner did not press for the same and as such there being no change in

circumstance, this bail application is liable to be rejected on the said count alone.

11. It is the further submission of the learned counsel for the State that since trial has already commenced, considering the nature of allegation release of the Petitioner at this stage would derail the ongoing trial and therefore, the Petitioner's application does not merit consideration of this Court.

12. Learned counsel for the Petitioner stated that he is being victimized without considering the plausible explanation regarding source of money for which he sought to rely on documents to prove that the so-called seizure of cash is on account of an independent transaction. And, the same was withdrawn through cheque from the account of one Zenish Lenka wife of co-accused Soumyajit Parija as she had obtained gold loan from ICICI Bank, Jagatsinghpur and the Petitioner along with other accused had been to Jaleswar and Balasore to purchase a power tillers machine and the aforesaid amount was illegally seized by the Police. And, solely relying on the statement of the co-accused, the Petitioner has been implicated.

13. It is the further submission of Mr. Sarangi, learned counsel for the Petitioner that the learned Court in seisin while considering bail application by the impugned order did not take into account the categorical stand of the Petitioner and mechanically rejected the bail application of the Petitioner. To fortify his stand, he has relied on the decisions of the apex Court in the case of **Bharat Chaudhury vrs. Union of India** reported in **MANU/SC/1240/2021**, **Tofan Singh vrs. State of Tamil Nadu**

reported in **(2020) 80 OCR (SC) 641** and **Sanjeev Chandra Agarwal vrs. Union of India (Special Leave Petition (Criminal) Diary No(s).24622/2017 disposed of on 25.10.2021)**.

14. Per contra, learned counsel for the State relied on the judgment of the apex Court in the case of **Narcotics Control Bureau vrs. Mohit Aggarwal** reported in **2022 SCC Online SC 891**. It is his further submission that defence plea as advanced regarding seizure of cash is a matter to be decided in trial and cannot be delved into at this stage. Hence, he reiterates his submission for rejection of the bail application.

15. Before the learned Court in seisin and this Court the learned counsel for the Petitioner argued with vehemence that the Petitioner is victimized and in the process, his "constitutional rights" are infringed.

16. It is submitted with emphasis that as there is no legally admissible material on record to connect the Petitioner with the alleged crime the Petitioner has to be released on bail and more so when other co-accused have been so released and as the Petitioner is a local person, his release would not affect the ongoing trial, as his presence can be secured.

17. This Court carefully examined the stand of the Petitioner as delineated in the bail application as well as in the written note of submission and the charge sheet submitted by the learned counsel for the State.

18. Learned counsel for the Petitioner has stated in detail the perfunctory manner in which investigation has been conducted and

submitted that ex facie there are gaping holes in the case of the prosecution and that it is a clear case of the Petitioner being framed for reasons best known.

19. On perusal of the order of rejection, it can be seen that the Tahasildar, Nayagarh who was the Executive Magistrate during search and seizure has already been examined as P.W.1 and the learned Court in seisin while considering the bail application of the Petitioner referred to the same from which, the seizure of cash of Rs.5,30,000/- from the Petitioner during the time of delivery of contraband has come to the fore.

20. The recovery of the amount which tallies with the statement of the co-accused, being the cost of the contraband of brown sugar of 1 Kg. 50 grams is a crucial link which cannot be lost sight of.

21. The defence plea that such cash was for a purpose completely unconnected with the alleged offence under the N.D.P.S. Act is a matter for consideration during the course of trial.

22. Any observation made by this Court at this stage when the learned Court in seisin is examining the same is the ongoing trial would amount to prejudging the issue against the settled principle of criminal jurisprudence.

23. The Petitioner with vehemence has relied on the judgment of the apex Court in the case of **Bharat Chaudhury** (supra).

24. On a close scrutiny of the said judgment, it can be seen that what weighed with the apex Court is the note appended by the

Assistant Commercial Examiner at the foot of the reports in the said case stating that "quantitative analysis of the samples could not be carried out for want of facilities".

25. Referring to the same, the apex Court arrived at the finding that it cannot be said that the Petitioner therein was found to be in possession of commercial quantity of psychotropic substances as contemplated under the N.D.P.S Act. And, additionally unlike in the case at hand there was no recovery even remotely connecting the accused in the case of **Bharat Chaudhury** (supra) with the offence committed. Hence, on factual matrix the case of **Bharat Chaudhury** (supra) has no application.

26. For the self-same reason, the judgment of the apex Court in the case of **Sanjeev Chandra Agarwal** (supra) is of no assistance to the Petitioner in the peculiar facts of the present case.

27. In the given facts scenario of the present case the ratio of **Tofan Singh** (supra) which has been relied upon in the case of **Bharat Chaudhury** (supra) has no application.

28. In relying on the said judgments, bereft of the facts in which the same were decided, learned counsel for the Petitioner lost sight of the seminal principle of interpretation of the judgment. Inasmuch as it is trite law that observations in the judgments cannot be read as "Euclid's theorem". It has to be applied in the given facts of a particular case.

29. In this context, this Court relies on the celebrated judgment of the apex court in the case of **Haryana Financial Corporation and another vrs. Jagdamba Oil Mills and others** reported in

(2002) 3 SCC 496 more particularly paras 19 to 22 thereof extracted hereunder**.**

> "**19.** Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark upon lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statues, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton (at p.761), Lord Mac Dermot observed: (All ER p. 14C-D)
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> "The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J, as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."
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> **20.** In Home Office v. Dorset Yacht Co. Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech…is not to be treated as if it were a statutory definition. It will require qualification in new circumstances." Megarry, J. in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board, Lord Morris said (All ER p.761 c)
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> "There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case."
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> 21. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

> **22.** The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR p.688, para19)
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> "19…..Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."
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> "Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

30. This Court also takes note of Petitioner's criminal proclivity which is one of the prime considerations for grant of bail in view of rigors of Section 37 of the N.D.P.S Act. More so when this Court is persuaded to hold that there are materials which prima facie justify the accusation.

31. Hence, after careful evaluation of the materials on record qua the Petitioner and considering the submission of the learned counsel for the respective parties, this Court does not find any merit in the bail application and the same is accordingly rejected.

32. It is needless to state that the observations made herein are solely for the purpose of consideration of the bail application of the Petitioner and the same ought not to weigh with the learned trial court while evaluating the defence of the Petitioner regarding his false implication and more particularly the seizure of cash as an

independent transaction unconnected with the crime alleged to have been committed under the N.D.P.S Act. The same has to be considered on its own merit.

33. The BLAPL is accordingly disposed of.

(V. NARASINGH)
Judge

Orissa High Court, Cuttack
Dated the 5th of January, 2023/ Pradeep