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IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 434 of 2024

An application under Section 439 of the Code of Criminal Procedure, 1973.

“B” **Petitioner**

-versus-

State of Odisha **Opp. Party**

For Petitioner : Mr. Rakesh Kumar Das, Advocate
on behalf of Mr. Sujit Ku. Das,
Advocate

For Opp. Party : Mr. M.R. Mishra, Addl. Standing
Counsel

CORAM:

HONOURABLE MISS JUSTICE SAVITRI RATHO

JUDGMENT

29.02.2024

सत्यमेव जयते

Savitri Ratho, J.

This is the third application of the petitioner under Section 439 of the Cr.P.C. in connection with Dhenkanal Sadar P.S. case No. 660 of 2023 corresponding to C.T.(Special) Case No. 11 of 2023 pending in the Court of the learned Judge, Special Court, Dhenkanal, under Section 21(b) of the N.D.P.S. Act.

2. BLAPL No.10664 of 2023 filed by the petitioner and co-accused Jitu @ Jitendra Pradhan had been disposed of on 05.10.2023 granting liberty to the petitioner to move for bail afresh after completion of the investigation.

3. BLAPL No. 13029 of 2023 had been filed by the petitioner and co-accused Jitu @ Jitendra Pradhan after completion of the investigation. On 21.11.2023, the prayer for bail of the co-accused Jitu @ Jitendra Pradhan had been allowed, while the prayer of the petitioner had been rejected as he had one criminal antecedent under Section 20(b)(ii)(B) of the NDPS Act, but liberty had been granted to the petitioner to move the learned Court below for bail afresh after annexing his medical documents as submission had been made that the petitioner is suffering from HIV AIDs and needs regular treatment and monitoring.

4. Thereafter, the petitioner has moved the learned Court below for bail and his prayer for bail has been rejected on 30.11.2023. While rejecting the prayer for bail, the learned Court below has observed as follows:

“Though the learned counsel for the accused by filing a document before this Court has submitted that the accused is a chronic HIV/AIDs patient, that cannot be considered as change circumstance as the Jail Authority, Dist. Jail, Dhenkanal must have taken care of him by giving proper treatment to him for the aforesaid disease.”

5. Report had been called for from the Superintendent Dist. Jail on 07.02.2024. The report of the Medical Officer, District Jail, Dhenkanal reveals that the petitioner had been admitted to District Jail, Dhenkanal on 08.08.2023 with the green booklet from ARTC S.C.B. Medical College & Hospital, Cuttack, which indicates that he is

suffering from H.I.V. (+ve) from 30.03.2009. Since the time he has been in the District jail, Dhenkanal, he is taking ART, AS prescribed by ARTC SCB MCH, Cuttack, regularly and he is going to SCB MCH, every month from health check up at ARTC and he is taking ART regularly and in stable condition.

6. Mr. Rakesh Kumar Das, learned counsel appearing for the petitioner submits that the petitioner is in custody since 08.08.2023 and in BLAPL No. 13029 of 2023, liberty has been granted to the petitioner to move the learned Court below for bail afresh along with his medical documents but his prayer has been rejected on the ground that the jail authorities must be looking after him. He submits that although it has been stated by the jail authorities that the petitioner is being given treatment in jail, but considering the nature of his ailment, he is not able to lead a normal life inside the jail, as the other inmates are avoiding contact with him, for which he is leading a secluded and miserable life in jail. He further submits that under Section 437 of the Cr.P.C., a sick or infirm person is entitled to be released on bail. He finally submits that in view of the quantity of brown sugar allegedly seized from his exclusive and conscious possession, Section 37 of the N.D.P.S. Act will not be a bar for consideration of his prayer for bail and his criminal antecedent is one under Section 20 (B) (ii) B of the NDPS Act which does not attract the restrictions under Section 37 of the NDPS Act. He relies on the decision of the Supreme Court in the case of *Bhawani Singh vs. State of*

Rajasthan in Special Leave to Appeal (Crl.) No. 2225 of 2022 disposed of on 11.04.2022.

7. Mr. M.R. Mishra, learned Additional Standing counsel opposes the prayer for bail stating that 26.720 gm of Brown Sugar has been seized from the conscious and exclusive possession of the petitioner (from his pant pocket) and as he has one criminal antecedent, he does not deserve to be released on bail. He further submits that after considering the submission of the learned counsel that the petitioner is suffering from AIDs, the prayer for bail of the petitioner had been rejected by this Court in BLAPL No. 13029 of 2023, while prayer of the co-accused had been allowed and there is no change in circumstance.

8. In the case of ***Bhawani Singh*** (supra), the Appeal of the accused who had criminal antecedents was pending disposal before the High Court. While directing for early disposal of his appeal, the Supreme Court has held as follows :

“Having regard to the peculiar circumstances of the case given that the petitioner is suffering from HIV and appears to be immuno compromised, this Court is of the opinion that a case for grant of bail is made out.

In the circumstances, the petitioner shall be enlarged on bail subject to such terms and conditions imposed by the Trial Court.

In addition to the usual conditions, the concerned court shall also impose appropriate conditions with regard to the periodic reporting by the concerned

petitioner at the concerned Police Station, since several cases are pending against him.”....

9. The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 (16 of 2017) (in short “ the Act”) has been enacted “ *to provide for the prevention and control of the spread of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome and for the protection of human rights of persons affected by the said virus and syndrome and for matters connected therewith or incidental thereto.*” The Act has come into force on the 10th day of September, 2018, vide Notification No. S.O. 4715(E) of the Central Government.

Section 34 of the Act which is relevant is extracted below :

Section 34(1) *In any legal proceeding in which a protected person is a party or such person is an applicant, the court, on an application by such person or any other person on his behalf may pass, in the interest of justice, any or all of the following orders, namely:—*

(a) that the proceeding or any part thereof be conducted by suppressing the identity of the applicant by substituting the name of such person with a pseudonym in the records of the proceedings in such manner as may be prescribed;

(b) that the proceeding or any part thereof may be conducted in camera;

(c) restraining any person from publishing in any manner any matter leading to the disclosure of the name or status or identity of the applicant.

(2) In any legal proceeding concerning or relating to an HIV-positive person, the court shall take up and dispose of the proceeding on priority basis.

10. The name of the petitioner is not reflected in the order in order to protect his identity.

11. As the petitioner is HIV+, even though the jail authorities have claimed that he is being extended proper treatment, the petitioner is also entitled to live with dignity in an environment in which is congenial to him, which is not possible inside the jail.

12. After considering the submission of the counsel, the decision of the Supreme Court and the provisions of the Act, the quantity of brown sugar seized from the petitioner who is admittedly HIV+ and under treatment, even though he has one criminal antecedent under the NDPS Act, I am inclined to allow his prayer for bail.

13. The petitioner shall be released on bail by the learned Court in seisin over the matter on such terms and conditions as deemed fit and proper by it.

14. The BL APL is accordingly allowed.

15. Urgent certified copy of the order be granted on proper application.

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(Savitri Ratho, J.)

*Orissa High Court, Cuttack.
The 29th of February 2024
Subhalaxmi, Jr. Steno*