

**(2024) 07 OHC CK 0097**

**Orissa High Court**

**Case No:** Bail Application No. 5790 Of 2024

Dourath Bagh @ Doulata Bag

APPELLANT

Vs

State Of Odisha

RESPONDENT

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**Date of Decision:** July 26, 2024

**Acts Referred:**

- Code of Criminal Procedure, 1973 - Section 439
- Narcotics Drugs and Psychotropic Substances Act, 1985 - Section 20(b)(ii)(C), 37(1)(b)(ii)

**Hon'ble Judges:** V. Narasingh, J

**Bench:** Single Bench

**Advocate:** S. Dwibedi, P.K. Maharaj

**Final Decision:** Disposed Of

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### **Judgement**

V. Narasingh, J

1. Heard learned counsel for the Petitioner and learned counsel for the State.
2. The Petitioner is an accused in connection with C.T. Case No.6 of 2023, pending on the file of learned Special Judge-cum-Addl. Sessions Judge, Balliguda arising out of Balliguda P.S. Case No.20 of 2023, for commission of alleged offences under Section 20(b)(ii)(C) of NDPS Act.
3. Learned counsel, on instruction, submits that except the present BLAPL, no other bail application of the Petitioner relating to the aforementioned P.S. case is pending in any other Court.
4. Being aggrieved by the rejection of his application for bail U/s.439 Cr.P.C. by the learned Special Judge-cum-Addl. Sessions Judge, Balliguda by order dated 17.05.2024 in the aforementioned case, the present BLAPL has been filed.

5. This is the 3rd journey of the Petitioner to this Court.

6. It is submitted by the learned counsel that the Petitioner is in custody since 7.2.2023 on the accusation of possessing the contraband to the tune of 63 Kg. 630 grams of ganja.

7. Learned counsel for the Petitioner seeks release on the ground of non-progress of trial and submits that while rejecting the bail application of the Petitioner by order dated 12.12.2023 in BLAPL No.9318 of 2023 taking note of the report of the learned Court in seisin, the trial was directed to be concluded by end of April, 2024.

8. It is the further submission of the learned counsel that independent witnesses P.Ws.1 and 2 and one official witness P.W.3 have resided. Hence, he seeks release relying on the judgments of the Apex Court in the case of Ankur Chaudhary vrs. State of Madhya Pradesh in SLP (Crl.) No.4648 of 2024 disposed of on 28.05.2024; Rabi Prakash vrs. The State of Odisha, 2023 SCC Online SC 1109 and Mohd. Muslim @ Hussain Vrs. State (NCT of Delhi), AIR 2023 SC 1648.

9. Per contra, learned counsel for the State submits that there is no inordinate delay so as to warrant exercise of the jurisdiction and in view of the bar contained in Section 37(1)(b)(ii) of the N.D.P.S Act, the Petitioner ought not to be released on bail.

10. It is the further submission that taking note of the nature of evidence of P.Ws.1 to 3, this Court did not grant bail to the Petitioner by order dated

12. 12.2023 adverted to hereinabove. Since there is no change in circumstance, the bail application does not merit consideration.

11. On instruction, learned counsel for the Petitioner submits that in the meantime 7 witnesses have been examined and the Petitioner is the first offender.

12. Taking note of such submission, a report was called for from the learned Court in seisin. The said report dated 20.07.2024 reads as under:

"xxx xxx xxx

I beg to submit the status report in connection with C.T. Case No.06 of 2023 pending before this Court that seven witnesses have been examined so far out of 14 listed witnesses of the prosecution. Now the case stands posted to 05.08.2024 for further evidence on the side of prosecution.

xxx xxx xxx"

13. Considering that the Petitioner has home and hearth within the jurisdiction of the learned Court in seisin and he is the first offender as stated and snail's pace trial is progressing, this Court directs the Petitioner to be released on bail on such terms to be

fixed by the learned court in seisin.

14. Before releasing, learned Court in seisin is requested to verify as to whether the Petitioner has any criminal antecedents. If it comes to fore that the Petitioner has any criminal antecedents, this order shall not be given effect to.

15. Additionally, it is directed that the Petitioner shall appear before the jurisdictional police station once every month on such date and time to be fixed by the learned Court in seisin till conclusion of trial. Certification of such appearance shall be submitted to the Court in seisin.

16. Accordingly, the BLAPL stands disposed of.

17. Urgent certified copy of this order be granted asper the rules.

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