
(2025) 10 OH CK 0025

Orissa HC

Case No: Bail Application No. 8547 Of 2025

Srabana Baliarsingh

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision: Oct. 24, 2025

Acts Referred:

- Constitution Of India, 1950 — Article 21
- Indian Penal Code, 1860 — Section 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB, 376E
- Bharatiya Nyaya Sanhita, 2023 — Section 64, 65, 66, 67, 68, 70, 71
- Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 180, 190, 193, 193(3), 193(6), 193(6)(a), 483
- Code Of Criminal Procedure 1973 — Section 161, 170, 173(2), 173(5), 173(5)(a)
- Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 20(b)(ii)(C), 37

Hon'ble Judges: G. Satapathy, J

Bench: Single Bench

Advocate: A.P. Bose, C. Mohanty

Final Decision: Disposed Of

Judgement

G. Satapathy, J

1. This is a bail application U/S.483 of the BNSS by the petitioner for grant of bail in connection with Pattapur PS Case No. 425 of 2024 corresponding to GR Case No.67 of 2024(N) pending in the Court of learned Sessions Judge, Berhampur for commission of offences punishable U/Ss. 20(b)(ii)(C) of NDPS Act, on the main allegation of transporting 214Kgs 200Grams of contraband ganja in a Bolero Pick-up vehicle bearing Regd. No.OD-05-M-0781.

2. Heard Mr. Amit Prasad Bose, learned counsel for the petitioner and Mr. C. Mohanty, learned Addl. Public Prosecutor in the matter and perused the record. On being queried about the criminal antecedent of the petitioner, Mr. Bose, however, voluntarily submits to withhold bail to the petitioner, if he is found to have any criminal antecedent of similar nature for commission of offence under NDPS Act.

3. Besides other grounds, Mr. Bose has primarily concentrated his submission for grant of bail to the accused-petitioner for want of submission of CE report. True it is that the provision of Sec. 170 of CrPC/190 of BNSS inter alia mandates for forwarding of the accused under custody to a magistrate empowered to take cognizance of offence upon a police report, if there is sufficient evidence or reasonable grounds, but Sec.173(2) of CrPC/193(3) of BNSS prescribes that as soon as the investigation is completed, the officer-in-charge of the police station shall forward(, including through electronic communication as in Sec. 193(3) of BNSS) to a magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government(as the State Government may, by Rules provide, only as in Sec. 193(3) of BNSS) stating-

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he (the accused) has been released on his bond or bail bond (and, if so, whether with or without sureties only as in Sec. 173(2) of CrPC);

(g) whether he (the accused) has been forwarded in custody under section 170;

(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB, or 376E of the Indian Penal Code(Secs. 64/65/66/ 67/68/70/71 of BNS).

(Only in the case of Sec. 193 of BNSS)

(i) The sequence of custody in case of electronic device;

(ii) The police officer shall, within a period of 90 days, inform the progress of investigation by any means including through electronic communication to the informant or the victim;

(iii) The officer shall also communicate, in such manner as the State Government may, by rules, provide, the action taken by him, to the person, if any, by whom the information relating to the commission of offence was first given.

3.1. Similarly, Sec.173(5) of the CrPC/193(6) of BNSS prescribes that when such report is in respect of a case to which Sec.170 CrPC/190 of BNSS applies, the police officer shall forward to the magistrate along with the report-

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of CrPC/180 of BNSS of all the persons whom the prosecution proposes to examine as its witnesses.

A careful and cumulative reading of the aforesaid provisions as mandated under law, it appears that no where it has been stated about submission of CE report to be mandatory, but it is sufficient, if the requirements of Sec.173(2) of CrPC/193(3) of BNSS and Sec.173(5) of the CrPC/193(6) of BNSS are complied with for the purpose of submission of charge sheet, however, it has been stated in Sec.173(5)(a) of the CrPC/193(6)(a) of the BNSS that the police officer shall forward to the magistrate along with the report all documents or relevant extracts thereof on which the prosecution proposes to rely other than those

already sent to the Magistrate during investigation. In a case for commission of offence under NDPS Act, more particularly when the investigation is conducted by police official, CE report plays a significant role because the police officer are not experience enough to conclusively state without forensic/chemical test of the articles that the article(s) which they recovered is/are particular contraband article(s) as contemplated in NDPS Act.

4. Be that as it may, whether submission of CE report is mandatory to construe the charge-sheet a complete one is a question pending before the larger Bench in the Apex Court in the case of Hanif Ansari vrs. State(NCT) of Delhi; 2024 SCC OnLine SC 537, but some of the High Courts are of the view that charge-sheet without CE report in a NDPS case is incomplete charge-sheet so as to make the accused entitled for a default bail. Since that issue has not been raised in this bail application, this Court, however, does not direct itself to answer such question more particularly when a reference in that regard is pending before the Apex Court. However, it is not disputed in this case that the preliminary charge-sheet has already been submitted on 20.03.2025 without the CE report and the learned trial Court has made sufficient endeavor to procure the same, which is borne out from the order sheet as produced by learned counsel for the petitioner. It is also not disputed that till today, the CE report is yet to be received and the trial Court is yet to take cognizance of offence for that reason. On the other hand, the petitioner is in custody since 22.09.2024, but in the meanwhile more than a year has elapsed, however, the uncertainty is still there before the trial Court from proceeding further in this case for want of CE report. Right to speedy trial is the fundamental right of the accused as guaranteed under Article 21 of the Constitution of India, but there is a statutory embargo in Sec.37 of NDPS Act for grant of bail in a case for commission of offence under NDPS Act involving commercial quantity. In the sequence of the events, it is not known as to when the trial will commence inasmuch as the CE report is yet to be submitted. However, there are 13 charge-sheeted witnesses and the trial would definitely take some time, even if it commences some times after receipt of the CE report. In such situation, the statutory embargo cannot override the constitutional guarantee as provided to the accused for right to speedy trial.

5. Besides, denial of bail only to keep the accused in confinement without any trial would definitely amount to deprivation of his personal liberty as guaranteed under Article 21 of the Constitution of India. In such situation and taking into account the materials placed on record, since CE report having not yet been produced in this case, this Court feels that the conditions of Sec.37 of NDPS Act may be dispensed with for the petitioner at this stage, provided the petitioner is not having criminal antecedent of similar nature.

6. For the reason stated hereinabove and taking into account the custody period of the petitioner without any progress in the case, even if after one year of custody of the petitioner for want of CE report, this Court without expressing any view on merit admits the petitioner to bail, but subject to verification of his criminal antecedent of similar nature.

7. Hence, the bail application of the petitioner stand allowed and the petitioner is allowed to go on bail on furnishing bail bonds of Rs.1,00,000/- (Rupees One Lakh) only with two solvent sureties each for the like amount to the satisfaction of the learned Court in seisin of the case on such terms and conditions as deem fit and proper by it.

In terms of the specific submission advanced for the petitioner, the benefit of the aforesaid order shall not be extended to the petitioner without seeking leave of this Court, if he is having criminal antecedent of similar nature for commission of offences under NDPS Act.

8. Accordingly, the bail application stands disposed of.