
(2025) 11 OHC CK 0014

Orissa HC

Case No: CRLMC No. 3669 Of 2025

Vicky Kumar @ Kashyap And
Another

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision: Nov. 24, 2025

Acts Referred:

- Police Officers Rules, 2025- Rule 2(1)(i), 2(1)(iii)
- Bharatiya Nyaya Sanhita, 2023-Section 3(5), 318(4), 319(2), 336(3), 338, 340(2), 528
- Information Technology Act, 2000-Section 66C, 66D
- Bharatiya Nagarik Suraksha Sanhita, 2023-Section 187, 187(3), 187(3)(i), 193(3), 193(9), 531, 531(1), 531(2), 531(2)(b), 531(2)(c)
- Code Of Criminal Procedure, 1973-Section 167, 167(2)

Hon'ble Judges: A.K. Mohapatra, J

Bench: Single Bench

Advocate: Sk. Zafarulla, Sasmita Nayak

Final Decision: Disposed Of

Judgement

A.K. Mohapatra, J

1. By filing the present application under Section 528 of BNSS, the Petitioners seek to invoke the inherent jurisdiction of this Court to quash order dated 11.08.2025 arising out of Balasore Cyber P.S. Case No.12 of 2025, corresponding to C.T. Case No.198 of 2025, pending before the learned S.D.J.M., Balasore. The above noted case was registered at the instance of the Informant-Opposite Party No.2 alleging commission of offence punishable under Sections 3(5), 318(4), 319(2), 336(3), 338, 340(2) of BNS read with Sections 66-C & 66-D of Information Technology Act' 2008. By virtue of the impugned order, the learned trial Court has rejected the prayer of the Petitioners for their release on default bail under Section 187(3) of BNSS, 2023.

2. Heard learned counsel for the Petitioners and learned counsel for the State. Perused the application as well as the prayer made therein.

3. Learned counsel for the Petitioners at the outset contended that after registration of the FIR on 17.03.2025 at about 16:30 hours at Cyber Crime & Economic Offences, Balasore Police Station, the investigation of the case commenced. In course of investigation the Petitioners were arrested on 10.05.2025. He further submitted that the Petitioners remained in custody for 90 days from the date of arrest, however, no charge-sheet was filed within the aforesaid statutory period of 90 days. Thereafter, on the 92nd day, i.e. on 12.08.2025, application under Section 187(3) of BNSS, 2023 was filed for release of the Petitioners on default bail. It is stated by learned counsel for the Petitioners that by that date the charge-sheet has not been filed by the I.O. as the investigation had not been completed.

4. In the aforesaid context, learned counsel for the Petitioners referred to the impugned order to impress upon this Court that at the time of hearing of his application for grant of default bail under Section 167(2) of Cr.P.C., which corresponds to Section 187(3) of BNSS, the charge-sheet was not before the learned trial Court. Thus, an indefeasible right has accrued in favour of the Petitioners to be released on bail on the ground that the investigating agency has not been able to file the charge-sheet within the statutory period of 90 days, which expired on 09.08.2025, as has been prescribed under the BNSS, 2023,. Even at the time of hearing of the application under Section 187(3) of BNSS, the charge-sheet was not before the learned trial Court. Learned counsels appearing for both sides submitted that the charge-sheet was not before the Court at the time of hearing of the application under Section 187(3) on 12.08.2025. Admittedly, the same has been filed after rejection of the petition filed by the Petitioners under Section 187(3) of BNSS.

5. Learned counsel for the Petitioners further submitted that since the FIR was registered on 17.03.2025, there exists no doubt with regard to the applicability of the procedural law, i.e. either the erstwhile Cr.P.C., 1973 or the BNSS, 2023. Thus, the FIR filed by the Informant in this case was rightly registered under the provisions of the BNSS and the trial was to be conducted under the BNSS, 2023. With regard to the statutory period that has been prescribed in the BNSS, learned counsel for the Petitioners contended that Section 187(3)(i) of BNSS provides that the Magistrate may authorize the detention of the accused person beyond the initial period of 15 days which may extent up to 90 days from the date of his detention in custody. For better appreciation, the provision contained in 187(3) of BNSS is quoted herein below;

“187. Procedure when investigation cannot be completed in twenty-four hours.

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(3) The Magistrate may authorise the detention of the accused person, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this sub-section for a total period exceeding-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of ten years or more;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXV for the purposes of that Chapter.”

6. Learned counsel for the Petitioners, further referring to the impugned order dated 11.08.2025, submitted before this Court that the learned trial Court has proceeded on the footing that the statutory period up to which the detention can be extended, if the charge-sheet is not filed, is 90 days as was the law under Section 167 of Cr.P.C. He further contended that although Section 167 of Cr.P.C. provides a statutory period of 90 days, however, by virtue of the Odisha Amendment to the Cr.P.C. [Vide Orissa Act 11 of 1997, s. 2] the same was extended to 120 days. He further

contended that since the BNSS, 2023 has repealed the Cr.P.C., as is evident from Section 531 of BNSS, 2023 the present case is to be tried under the provisions of the BNSS, 2023. In the aforesaid context, it would be pertinent to refer to Section 531(1) of BNSS which is quoted herein below;

“531. Repeal and savings.

(1) The Code of Criminal Procedure, 1973 is hereby repealed.

(2) Notwithstanding such repeal-

(a) if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973, as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force;

(b) all notifications published, proclamations issued, powers conferred, forms provided by rules, local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the said Code and which are in force immediately before the commencement of this Sanhita, shall be deemed, respectively, to have been published, issued, conferred, specified, defined, passed or made under the corresponding provisions of this Sanhita;

(c) Any sanction accorded or consent given under the Code in pursuance of which no proceeding was commenced under that Code, shall be deemed to have been accorded or given under the corresponding provisions of this Sanhita and proceedings may be commenced under this Sanhita in pursuance of such sanction or consent.

(3) Where the period specified for an application or other proceeding under the said Code had expired on or before the commencement of this Sanhita, nothing in this Sanhita shall be construed as enabling any such application to be made or proceeding to be commenced under this Sanhita by reason only of the fact that a longer period therefor is specified by this Sanhita or provisions are made in this Sanhita for the extension of time.”

7. In view of the aforesaid provision of law, learned counsel for the Petitioners contended that so far the present case is concerned, the statutory period should be 90 days as has been provided under Section 187(3) of BNSS, 2023 and the provisions of the old Code which have been repealed shall not be applicable to the present case. Learned counsel for the Petitioners, again reverting to the impugned order dated 11.08.2025, and by referring to a notification of the State Government, submitted that the learned trial Court has committed an error in coming to a conclusion that the statutory period within which the charge-sheet is to be filed is 120 days as was prescribed under the erstwhile Cr.P.C. The learned trial Court has arrived at such a conclusion by misinterpreting the Gazette Notification of the Ministry of Law and Justice, New Delhi dated 16.07.2024 and of this Court dated 27.09.2024. On such ground, learned counsel for the Petitioners contended that the impugned order dated 11.08.2025 is unsustainable in law and the same should be quashed.

8. Learned counsel for the State on the other hand objected to the prayer made in the present application. In course of her argument, learned counsel for the State contended that the learned trial Court has not committed any illegality in rejecting the Petitioners' prayer for grant of default bail under Section 187(3) of BNSS, 2023. While elaborating her argument learned counsel for the State contended that the learned trial Court has referred to the Odisha Gazette Notification dated 01.10.2024, wherein it has been provided that where the term of imprisonment is for life or for a term of 10 years or more, the investigation is to be concluded and the charge-sheet is to be filed

within 120 days and not 90 days. She further argued that the Odisha Amendment to the Cr.P.C. extending the statutory period from 90 days to 120 days continues to remain in the statute book and the BNSS, 2023 is to be read by taking into consideration the Odisha Amendment with regard to the statutory period. On such legal grounds, learned counsel for the State contended that the impugned order does not call for any interference by this Court at this stage as the learned trial Court has not committed any illegality at all.

9. Upon hearing the learned counsels appearing from both sides and on a careful analysis of the dispute involved in the present case, this Court observed that the question which falls for determination in the present application is with regard to interpretation of Section 187 of the BNSS, 2023 and as to whether the accused Petitioners are entitled to be released on default bail as has been claimed by the learned counsel for the Petitioners? To answer the aforesaid question, this Court is required to first examine as to whether the Odisha Amendment to Section 167 of Cr.P.C. vide Odisha Act 11 of 1997 would continue to remain in force even after introduction of the BNSS, 2023, particularly keeping in view the repeal and saving clause under Section 531 of the said Act.

10. A plain reading of Section 531 of the BNSS, 2023 would give an impression that the Code of Criminal Procedure, 1973 has been repealed with the coming into force of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 w.e.f. 01.07.2024. Such repeal falls under Section 533(1) of the BNSS. Insofar as the savings clause is concerned, the same has been provided under sub-Section 2 of Section 531 of BNSS. Section 531(2), which is the saving clause in BNSS, 2023 and such provision saves any pending appeal, application, trial, inquiry or investigation which has been filed prior to the date the BNSS, 2023 came into force and continued while the BNSS, 2023 was in force. Such proceedings are to be continued under the provisions of the Cr.P.C., 1973 and all such provisions of the Cr.P.C. which were in force prior to the BNSS, 2023 coming into force shall be made applicable to such pending proceedings.

11. Similarly, Section 531(2)(b) saves all notifications published proclamations issued, powers conferred, forms provided by rules, local jurisdictions defined, sentences passed and orders, rules and appointments made under the old Code and which were in force immediately before the commencement of the BNSS, 2023 shall be deemed to have been continuing under the BNSS, 2023. Similarly, Section 531(2)(c) saves sanction accorded or consent given under the Code in pursuance of which no proceeding was commenced under the Code, shall be deemed to have been accorded or given under the BNSS, 2023. On a close scrutiny of Section 531 of BNSS, 2023, it appears that the State Amendment made to the Code, 1973 have not been specifically saved. Moreover, by virtue of the Amendment, the amending provisions have become an integral part of the main statute. Thus, there is no doubt that by operation of Section 531(1), while the Code of Criminal Procedure, 1973 was repealed, the effect of the State Amendment including Odisha Act 11 of 1997 gets obliterated. What is in force now is the provision contained in Section 187 of the BNSS, 2023. Since Section 187(3)(i) provides 90 days for the category of offence involved in the present case, the charge-sheet in the present case should have been filed within 90 days.

12. In view of the aforesaid analysis, this Court has no hesitation in coming to a conclusion that the Odisha Amendment vide Act 11 of 1997 has also been repealed along with the Parent Act, i.e. Cr.P.C., 1973 and that in the trials under the BNSS, 2023 the charge-sheet is to be filed in terms of Section 187 of BNSS thereof. Accordingly, the period of limitation for filing of the charge-sheet for the purpose of Section 187 of BNSS would be 90 days.

13. The notification of Home Department, Government of Odisha No.8923 dated 28.02.2025 lays down a set of rules framed under Section 193(3) & (9) of the BNSS, 2023. Such rule is known as Odisha submission of final form by Police Officers Rules, 2025. Such rule shall come into force from the date of their publication in the Odisha Gazette. Sub-Rule 2(1)(i) thereof specifically stipulates that the investigation in a case of the present nature is to be completed within 90 days. Further, it specifically provides in Rule 2(1)(iii) that in the event of failure to complete the

investigation within such stipulated period of time, the accused in custody has right to be released on default bail.

14. The reference made to the Government of India notification dated 16.07.2024 as well as the notification of this Court dated 27.09.2024 in Para-7 of the impugned order has no bearing on the outcome of the present application. The notification dated 27.09.2024 and 16.07.2024 were general in nature and the same were in the context of replacing the name of the repealed statute by the ones which were introduced w.e.f. 01.07.2024. Such notification does not interfere in any manner with either Section 187 of the BNSS, 2023 or Section 531 of BNSS thereof. Thus, this Court is of the considered view that the above noted two notifications will have no impact while interpreting Section 187 of the BNSS, 2023.

15. On a careful analysis of the impugned order, this Court observed that in Para-8 of the order that the learned trial Court has opined that 90 days' period is the statutory period within which the investigation has to be concluded and charge-sheet is to be filed, failing which the accused in custody gets a right to be released on default bail. However, in the sub-para of Para-8 the learned trial Court appears to have been misguided by the notification dated 16.07.2024 and 27.09.2024 which have been referred to hereinabove in detail. On a careful analysis of the legal position as well as taking into consideration the factual background of the present case, this Court has no hesitation in coming to a conclusion that the period of limitation to conclude the investigation, as per the relevant provision under Section 187 of BNSS, is 90 days and not 120 days as has been held by the learned trial Court. Accordingly, order dated 11.08.2025 at Annexure-2 passed by the S.D.J.M., Balasore in C.T. Case No.198 of 2025 is hereby quashed. Further, the matter is remanded back to the learned trial Court to reconsider the application of the Petitioners for their release on default bail by applying the principle laid down hereinabove, within a period of two weeks from the date the Petitioners approach the learned trial Court along with a certified copy of this order.

16. With the aforesaid observation/direction, the CRLMC application stands disposed of.