

(2025) 12 OHC CK 0035

Orissa HC

Case No: Anticipatory Bail No. 9255 Of 2025

Nandkishor Agrawal

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision: Dec. 9, 2025

Acts Referred:

- Bharatiya Nyaya Sanhita, 2023-Section 61(2), 308(5), 111(2)(B)
- Indian Penal Code, 1860-Section 34, 120b, 212, 302
- Arms Act, 1959-Section 25, 27
- Odisha Prevention Of Gamblingact, 1955-Section 3
- Bharatiya Nagarik Suraksha Sanhita, 2023-Section 35(3)

Hon'ble Judges: V. Narasingh, J

Bench: Single Bench

Advocate: D. Mohapatra, S. Panda

Final Decision: Disposed Of

Judgement

V. Narasingh, J

1. Heard Mr. Mohapatra, learned Senior Advocate for the Petitioner and Mr. Panda, learned counsel for the State.

2. The Petitioner is seeking pre-arrest bail in connection with C.T Case No.1460 of 2025 pending in the Court of learned S.D.J.M, Jharsuguda, arising out Lakhanpur P.S. Case No.140 of 2025 for commission of offences punishable under Sections 308(5)/ 111(2)(b)/ 61(2) of BNS.

3. It is alleged that the Petitioner, as a partner of one 'IB Valley Transport', participated in a tender, i.e., 'Hiring of Pay Loaders for Mechanical Transfer of Coal into Road Sale and Washery Trucks at the coal stocks of Lakhanpur OCP / Integrated Lakhanpur-Belpahar- Lalari Project' invited by MCL. And, the said IB Valley Transport was awarded the tender at 99% below the estimated cost. To deflate the loss incurred in submitting the bid at an abnormally low cost, an

extortion racket is being run of which the petitioner is the kingpin. It is alleged that the Petitioner along with his henchmen illegally collected Rs.145/- per truck and Rs.5/- per ton from each transporter engaged and at his behest, Rs.300/- per truck is being collected by the truck owners association. It is the case of the prosecution that the modus operandi adopted by the petitioner as noted above clearly comes under the accusation under Section 111(2)(b) of Bharatiya Nyaya Sanhita, 2023-Section[**111. Organised crime.-** (1) xxx xxx (2) Whoever commits organised crime shall,- (a) xxx xxx (b) in any other case, be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees.].

4. Learned Senior Counsel appearing for the Petitioner, Mr. Mohapatra submitted that the present Petitioner is implicated in number of cases of similar nature with oblique motive. In this context, he referred to Lakhanpur P.S. Case No.123 of 2025 and Belpahar P.S. Case No.152 of 2025. It is stated that in the aforesaid two cases, similar allegations were made and in Belpahar P.S. Case No.152 of 2025, the allegation was, inter alia, under Section 111(2)(b) of BNS[**111. Organised crime.-** (1) xxx xxx(2) Whoever commits organised crime shall,-(a) xxx xxx (b) in any other case, be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees.] as in the present case and considering the complicity of the present Petitioner, the benefit of Section 35(3) of Bharatiya Nagarik Suraksha Sanhita, 2023-Section[**35. When police may arrest without warrant.-** (3) The police officer shall, in all cases where the arrest of a person is not required under sub-section (1) issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.]was extended and in Lakhanpur P.S. Case No.123 of 2025, the Petitioner was taken to custody and this Court granted him bail by order dated 29.07.2025 in BLAPL No.7177 of 2025.

4-I. It is the further submission of the learned Senior Counsel referring to the affidavit filed on behalf of the Petitioner clarifying, the criminal antecedents as alleged by the learned counsel for the State, copy of which has been served on the learned counsel for the State that so far as criminal proclivity of the Petitioner which has come to fore during the course of hearing, it is stated that the Petitioner is implicated as an accused in Brajrajnagar P.S. Case No.71 of 2023 under Sections 302/212/120-B/34 IPC read with Sections 25/27 of the Arms Act and one of the co-accused has challenged the order of cognizance and further proceeding at the behest of the said co-accused has been stayed by this Court. The Petitioner has been released on bail in the said case and there is no allegation of any violation of the terms and conditions of release in the said case.

4-II. The Petitioner was cited as an accused in Brajrajnagar P.S. Case No.08 of 2011 and the Petitioner was acquitted in the said case.

4-III. The Petitioner is also an accused in Brajrajnagar P.S. Case No.223 of 2017. The FIR was lodged because of demonstration objecting to the price hike of the essential commodities and he

has been granted bail in the said case.

4-IV. So far as Brajragnagar P.S. Case No.245 of 2017 under Section 3 of the OPG Act is concerned, it is submitted that the said case does not relate to the Petitioner.

4-V. It is stated, on instruction, that the Petitioner was cited as an accused in Brajragnagar P.S. Case No.121 of 2024 and in the said case, the police submitted final report in respect of the Petitioner.

5. Referring to the allegation, it is submitted that because of the Petitioner's political affiliation he is being made a scapegoat on extraneous considerations. It is submitted that the Petitioner has firm roots in the society and is in public life being the Chairman of the Brajragnagar Municipality for two terms. As such, there is no chance of his fleeing from justice. It is stated that since the Petitioner has joined the investigation in all the three cases in which similar allegations have been made that ought to weigh with this Court in considering his prayer for pre-arrest bail in this case.

It is also submitted by the learned Senior Counsel that since the co-accused in the case at hand have been released on pre-arrest bail that may be taken into account in considering the prayer of the Petitioner, inter alia, on the ground of parity.

6. Per contra, learned counsel for the State, Mr. Panda opposes such prayer. It is submitted that even accepting that the Petitioner may not abscond but because of his political clout and local influence there is every chance of tampering of evidence and unless he is subjected to custodial interrogation, it will not instill a sense of confidence in the minds of the prospective witnesses to cooperate with the investigation, thereby derailing the impartial investigation to unearth the truth.

Referring to the case diary, it is submitted by the learned Public Prosecutor, Mr. Panda that there are clinching materials to indicate that an extortion racket was being run by the Petitioner in connivance with the others and there are materials on record to indicate that unless stamps were put on the transport documents evidencing the payment of money illegally being demanded, as stated in the FIR, no one was allowed to undertake transport work of MCL. It is his further submission that the Petitioner is not at par with the other co-accused, who have since been released on bail and considering the distinguishing features vis-à-vis the role ascribed to the Petitioner, as he is the mastermind and at whose behest the extortion racket is being run, he ought not to be protected by pre-arrest bail.

Release of the Petitioner under Section 35(3) of BNSS in Belpahar P.S. Case No.152 of 2025 and release of the Petitioner in Lakhanpur P.S. Case No.123 of 2025 after being taken to custody have no relevance regarding the allegations in the case at hand which have to be considered independently.

Learned counsel for the State also submitted that admittedly the Petitioner has criminal antecedents and attempt at his behest to explain them does not in any way dilute the allegations. As such the Petitioner is not entitled to be protected by pre-arrest bail. In this context, on the basis of the recitals in the case diary, he relied on the statements of the Complainant-contractor, truck

owners and the drivers.

7. The approach of the Courts in considering the application for pre-arrest bail has been reiterated by the Apex Court in the case of *Satender Kumar Antil vrs. Central Bureau of Investigation and another*[*Satender Kumar Antil vrs. Central Bureau of Investigation and another*; 2023 SCC Online SC 452], The Apex Court has clarified that the directions qua post arrest bail shall apply in equal measure to cases of anticipatory bail and the observation in this regard which is germane is extracted hereunder;

“.....we would like to clarify that what we have enunciated qua bail would equally apply to anticipatory bail cases. Anticipatory bail after all is one of the species of a bail”.

8. The submissions of the learned Senior Counsel, Mr. Mohapatra and the learned Public Prosecutor, Mr. Panda have to be examined on the touch stone of the law as set forth above.

9. It is worth noting that in Belpahar P.S. Case No.152 of 2025, the allegations were of similar nature and in the said case, the prosecution had taken recourse to the provisions under Section 35(3) of BNSS[**35. When police may arrest without warrant.**- (3) The police officer shall, in all cases where the arrest of a person is not required under sub-section (1) issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice].

FIR in the case at hand was instituted on 19.07.2025 when the Petitioner was in custody and the present anticipatory bail application in respect of the case at hand was filed on 01.08.2025 and came for consideration for the first time on 13.08.2025 on which date this Court granted interim protection while taking up the present anticipatory bail application along with other connected matter (ABLAPL No.8932 of 2025). There is nothing on record to indicate that the custodial interrogation of the present Petitioner was sought by taking him on remand though it is now stated that the Petitioner may interfere with the ongoing investigation. No material has been brought on record to substantiate such plea. It is also not disputed that during the course of investigation the Petitioner has cooperated though it is submitted that such cooperation being ensconced by an order of interim protection is fanciful and truth cannot be unearthed in such interrogation.

10. The submission of the learned Senior Counsel that there is no allegation of the Petitioner violating any of the terms of the bail relating to the cases in which he has been cited is not refuted and as such, cannot be lost sight of.

11. It is trite that the allegation of interference in investigation can be levelled against any accused and if the same is accepted as gospel, no accused against whom the accusation of commission of a non-bailable offence is levelled can be granted pre-arrest bail.

As it has often been reiterated that balance has to be struck between the prerogative of the prosecution to conduct free and fair investigation vis-à-vis the prayer of the accused to seek pre-arrest bail.

11-B. This Court is not oblivious of the nature of the allegations under Section 111(2)(b) of BNS[111. **Organised crime.**- (1) xxx xxx (2) Whoever commits organised crime shall,- (a) xxx xxx (b) in any other case, be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees. xxx xxx xxx] and the complexity of investigating the same.

12. On a perspicuous analysis of the materials on record relating to the accusation vis-à-vis the Petitioner and considering the same on the touchstone of the judgment of the Apex Court in the case of Satender Kumar Antil³ (supra), this Court is persuaded to hold that the Petitioner is entitled to the relief of pre-arrest bail and accordingly, it is directed that on surrendering within three weeks hence and moving for bail, the Petitioner shall be released on bail by the learned Court in seisin on such terms as deemed just and proper with further condition that the Petitioner shall continue to cooperate with the ongoing investigation and shall appear before the I.O as and when summoned.

Additionally, it is directed that the Petitioner shall not leave the country till conclusion of the investigation, without specific permission from the learned Court in seisin.

13. It is needless to state that the observations made hereinabove are only for the purpose of consideration of the Petitioner's prayer for pre-arrest bail and the same ought not to be considered as this Court expressing any opinion regarding complicity of the Petitioner which has to be probed independently.

The ABLAPL is accordingly disposed of.