

(2025) 04 OHC CK 1410
In the Orissa High Court
Case No : CRLMC No.1092 Of 2024

Gopal Pal

APPELLANT

Vs

State Of Odisha Vs

RESPONDENT

Date of Decision : 10-04-2025

Acts Referred:

Constitution of India, 1950 — Article 21

Code of Criminal Procedure, 1973 — Section 161, 167, 167(2), 482

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 36A(4), 37

Citation : (2025) 04 OHC CK 1410

Hon'ble Judges : S.S. Mishra, J

Bench : Single Bench

Advocate : Basudev Pujari, Abhas Mohanty, P. Patnaik, J. Sahoo, A. Mohanty,
S.N. Biswal

Final Decision : Disposed Of

Judgement

S.S. Mishra, J

1. The petitioner has filed the present application under Section 482 of the Code of Criminal Procedure, 1973, seeking quashing of the criminal proceedings initiated against him and assailing the order dated 26.02.2024, passed by the learned Sessions Judge-cum-Special Judge, Malkangiri arising out of Kalimela P.S. Case No.212 of 2023, corresponding to Special G.R. Case No.182 of 2023.

2. Heard, Mr. Basudev Pujari, learned Counsel for the petitioner and Mr. S.N. Biswal, learned Additional Standing Counsel for the opposite party.

3. The prosecution case in brief is that on 28.08.2023, the informant, Sujit Kumar Biswas, while performing patrolling duties in the Ghat road area of Kamalapadar under Kalimela P.S., noticed an individual was standing with a heap of plastic bags on the roadside at around 11:20 P.M. Upon seeing the patrolling party, the person immediately fled into the jungle, but was pursued and apprehended. The accused, identified as Gopal Pal, in the instant case the

petitioner-accused was found to be carrying a gun (SBML gun).

The petitioner-accused admitted to have been guarding the plastic bags, which contained contraband Ganja intended for transportation out of the State. He further disclosed that the Ganja had been entrusted to him by one Pratham Patra @ Ghatak Patra and his associates. The petitioner also named several other individuals, who were involved in the trafficking racket.

A total of 42 plastic jerry bags containing 1050 kg of contraband Ganja (excluding the weight of the bags) were seized. Based on this information, an FIR was filed, and an investigation was initiated and it is pertinent to mention that the accused petitioner was taken to custody on the very same day, i.e., on 28.08.2023.

4. The charge sheet concerning the incident was filed before the learned Sessions Judge-cum-Special Judge, Malkangiri, on 24.02.2024 (Saturday). In the meanwhile, the petitioner moved an application for bail under Section 167(2) of the Cr.P.C. on 26.02.2024 (Monday), asserting that he had been remanded to custody on 28.08.2023 and had completed 180 days of detention on 23.02.2024, contending that, in terms of Section 36A(4) of the NDPS Act read with Section 167(2) of the Cr.P.C., the statutory period for filing the charge sheet in offences under the NDPS Act was 180 days, and since the charge sheet had not been filed within that period, he was entitled to default bail. However, by impugned order dated 26.02.2024, the learned Sessions Judge-cum-Special Judge, Malkangiri, rejected the application, noting that the charge sheet had already been filed on 24.02.2024.

5. Learned Counsel for the petitioner submits that the petitioner was unaware of his right to default bail, neither was he informed about the same on the 181st day of being taken into custody. The charge sheet was filed while the petitioner was in custody on 24.02.2024 (Saturday), and the bail application was subsequently filed on 26.02.2024 (Monday). However, the bail application was rejected on technical grounds, despite the fact that the right to default bail is an indefeasible right of the accused.

6. The learned Counsel for the petitioner relied on several judgments of this Court to support his contention regarding the petitioner's indefeasible right to default bail.

In Suresh Chandra Sahoo @ Sura @ Sarat Chandra Sahoo v. State of Odisha AIR ONLINE 2023 ORI 361, this Court held that the denial of default bail was invalid where the charge sheet was filed 10 days after the expiry of 180 days. The Court observed that the accused was neither produced before the Court on the 181st day nor informed of his right to be released on default bail, thereby setting aside the order of rejection.

Further, in Lambodar Bag v. State of Orissa 2018 (II) OLR - 918, this Court emphasized that while Section 36A(4) of the NDPS Act does not explicitly

mandate notice to the accused before granting an extension of the statutory period, such a requirement must be read into the provision in the interest of justice. The Court held that no extension shall be granted by the Special Court without issuing such a notice and that the prosecution must submit its report in advance, not on the last day, to ensure the accused has a fair opportunity to contest the extension.

7. Further he relied on the principles laid down in the judgement of *Laxmidhar Behera v. State of Odisha* 2021 (1) OLR-810, in which this Court held thus:-

" Section 167 Cr.P.C. specifically stipulates that the Magistrate in an pending investigation can remand the accused for a term not exceeding 15 days at a time and in total for a period of 90 days, in Odisha context 120 days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years, and 60 days, where the investigation relates to any other offence. Under this provision, the power of the Magistrate to detain the accused in custody comes to an end after expiry of the aforesaid period unless the charge sheet is filed as the learned Magistrate thereafter has no jurisdiction to remand the accused under Section 167 of Cr.P.C. in a case pending investigation. However, the same is subject to exception that if the accused after expiry of the period, even if bail is offered does not avail of the same, then under the enabling provision of the said section, the Magistrate can remand the accused, even if investigation has not been completed within the stipulated period. The Apex Court in a number of cases have held that the accused incarcerated is required to be informed by the Court remanding him under Section 167 of Cr.P.C. when the investigation is not completed within the stipulated period, regarding accrual of his right to be released on bail for such default of the investigation. Reference in this regard can be made to the case *Rakesh Kumar Paul v. State of Assam*, reported in (2017) 15 SCC 67."

Learned Counsel for the petitioner relying on the above case contends that the learned Special Judge, Malkangiri, erred in rejecting the bail application without informing the accused of his statutory right, thereby also violating the principles of natural justice. Further, the restrictions under Section 37 of the NDPS Act do not apply to default bail, as affirmed in *Lambodar Bag v. State of Orissa* (supra). Since the charge-sheet was filed belatedly on 24.02.2024 (181st day), the petitioner's right to default bail had already accrued and could not be defeated. The rejection of bail has caused serious prejudice to the petitioner, warranting interference by this Court to uphold the settled legal principles and prevent a miscarriage of justice.

8. The current Investigating Officer (hereinafter IO, for brevity), in his compliance affidavit, submits that the delay in filing the charge-sheet arose as he assumed charge of the case 32 days after the petitioner was taken into custody. He further states that the intervening time was diligently spent due to recording of the Section 161 Cr.P.C. statements of the Executive Magistrate and other witnesses, as well as completing the requisite official procedures. Acknowledging

the lapse, the IO tenders his unconditional apology for the delay.

9. The right to personal liberty and a fair trial are sacrosanct principles enshrined under Article 21 of the Constitution of India. The statutory protection granted to an accused under Section 167(2) of the Cr.P.C. and corresponding provisions of the special statutes ensures that no individual is unjustly detained beyond the prescribed period unless valid extensions are granted in accordance with the law. The Hon'ble Supreme Court, in multiple rulings, has emphasized that procedural safeguards must be strictly adhered to, failing which the accused is entitled to bail as a matter of right. In *Hitendra Vishnu Thakur v. State of Maharashtra* (1994) 4 SCC 602, the Apex Court has laid down clear principles regarding the grant of bail upon default of the investigating agency, holding as follows:

"Thus, we find that once the period for filing the charge-sheet has expired and either no extension under clause (bb) has been granted by the Designated Court or the period of extension has also expired, the accused person would be entitled to move an application for being admitted to bail under sub-section (4) of Section 20 TADA read with Section 167 of the Code and the Designated Court shall release him on bail, if the accused seeks to be so released and furnishes the requisite bail. We are not impressed with the argument of the learned counsel for the appellant that on the expiry of the period during which investigation is required to be completed under Section 20(4) TADA read with Section 167 of the Code, the court must release the accused on bail on its own motion even without any application from an accused person on his offering to furnish bail. In our opinion an accused is required to make an application if he wishes to be released on bail on account of the 'default' of the investigating/prosecuting agency and once such an application is made, the court should issue a notice to the public prosecutor who may either show that the prosecution has obtained the order for extension for completion of investigation from the court under clause (bb) or that the challan has been filed in the Designated Court before the expiry of the prescribed period or even that the prescribed period has actually not expired and thus resist the grant of bail on the alleged ground of 'default'. The issuance of notice would avoid the possibility of an accused obtaining an order of bail under the 'default' clause by either deliberately or inadvertently concealing certain facts and would avoid multiplicity of proceedings. It would, therefore, serve the ends of justice if both sides are heard on a petition for grant of bail on account of the prosecution's 'default'. Similarly, when a report is submitted by the public prosecutor to the Designated Court for grant of extension under clause (bb), its notice should be issued to the accused before granting such an extension so that an accused may have an opportunity to oppose the extension on all legitimate and legal grounds available to him. It is true that neither clause (b) nor clause (bb) of sub-section (4) of Section 20 TADA specifically provide for the issuance of such a notice but in our opinion the issuance of such a notice must be read into these provisions both in the interest of the accused and the prosecution as well as for doing complete justice between the parties. This is a requirement of the principles of natural justice and the issuance of notice to the accused or the

public prosecutor, as the case may be, would accord with fair play in action, which the courts have always encouraged and even insisted upon. It would also strike a just balance between the interest of the liberty of an accused on the one hand and the society at large through the prosecuting agency on the other hand. There is no prohibition to the issuance of such a notice to the accused or the public prosecutor in the scheme of the Act and no prejudice whatsoever can be caused by the issuance of such a notice to any party.....”

The above judgment reinforces that an accused must be informed of his statutory rights and given the opportunity to seek bail when the investigating agency defaults in completing the investigation within the stipulated time. However, in the instant case, the accused was neither produced before the Magistrate nor made aware of his right to seek bail under the ‘default’ clause. The interpretation of the Hon’ble Apex Court in the aforesaid judgment directly flows from statutory provisions contained in the Proviso (a) to Section 167(2) of Cr.P.C., 1973 which reads thus: -

“(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, 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 paragraph 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 not less than ten years;

(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 XXXIII for the purposes of that Chapter;”

Special emphasis has to be supplied to the fact that the grant of bail under the aforesaid provision is not automatic rather dependent upon the preparedness of the accused person to furnish bail bond. However, in the same breath in order to enable the accused to be prepared to furnish bail bond or otherwise, the provision pre-supposes a positive obligation upon the Magistrate/ Court authorizing custody of the accused to inform the accused about his right to be released on bail upon furnishing bail bond. Which in the fact of the present case has not been complied with and the accused in the first available opportunity moved the application for default bail. Such a lapse amounts to a grave miscarriage of justice, directly infringing upon his fundamental rights under Article 21, which guarantees personal liberty and the right to a speedy trial. Denying an individual the protection of procedural safeguards enshrined in law not only weakens the administration of justice but also undermines the

constitutional mandate of fairness and due process. Therefore, judicial intervention is necessary to rectify this violation and uphold the rule of law.

10. Taking into consideration of the entire conspectus, material available on record, the judgments cited and on basis of the foregoing discussion, the impugned order dated 26.02.2024 passed by the learned Sessions Judge-cum-Special Judge, Malkangiri in Special G.R. Case No.182 of 2023, arising out of Kalimela P.S. Case No.212 of 2023, is quashed, and the accused-petitioner be released on bail subject to such conditions as may be imposed by the learned trial court. However, at this stage, it would not be appropriate to quash the entire proceedings, as beseeched.

11. With the above direction, this CRLMC is disposed of.

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