

(2025) 12 OHC CK 1917
In the Orissa High Court
Case No : Bail Application No. 9270 Of 2025

Subash Nayak

APPELLANT

Vs

State Of Odisha & Anr

RESPONDENT

Date of Decision : 23-12-2025

Acts Referred:

Constitution Of India, 1950 — Article 21, 22, 22(2)
Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 58, 179, 483
Bharatiya Nyaya Sanhita, 2023 — Section 64(1), 351(3)
Protection Of Children From Sexual Offences Act, 2012 — Section 4

Citation : (2025) 12 OHC CK 1917

Hon'ble Judges : G. Satapathy, J

Bench : Single Bench

Advocate : R.K. Routray, 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 Chauliaganj PS Case No. 436 of 2025 corresponding to Spl. GR Case No.130 of 2025 pending in the Court of learned Addl. District & Sessions Judge-cum-Special Court under POCSO Act, Cuttack for commission of offences punishable U/Ss. 64(1)/351(3) of BNS r/w Sec.4 of POCSO Act, on the main allegation of committing rape and penetrative sexual assault upon the victim.

2. Heard Mr. Rakesh Kumar Routray, learned counsel for the petitioner and Mr. C. Mohanty, learned Addl. Public Prosecutor in the matter and perused the record including the written instruction as produced.

3. The petitioner in addition to other grounds has taken the plea for grant of bail to him for his detention in custody beyond twenty four hours. On the last date, this Court by taking into consideration the submission as advanced for the petitioner has sought for instruction from the concerned IO regarding detention

of the petitioner beyond twenty four hours in custody through learned Addl. Public Prosecutor who in course of the day has produced the written instruction, wherein the IO has stated that the case was registered on the basis of the report submitted by the complainant on 17.08.2025 and the petitioner was issued with a notice U/S.179 of BNSS only on 19.08.2025 asking the petitioner to appear before Chauliaganj Police Station on 20.08.2025 at 11.00AM, but surprisingly, the petitioner was medically examined on 18.08.2025 which is evident from the certified copy of the requisition issued by the IO together with the medical examination report of the petitioner furnished by concerned doctor who had prepared such report on 19.08.2025 at about 10.30AM. The aforesaid documents as produced would unambiguously go to show that the petitioner was with the IO since 18.08.2025, but he was only forwarded to the Court on 20.08.2025 and thereby, the petitioner was found to have been detained by the IO beyond twenty four hours.

4. It is not in dispute that Sec.58 of BNSS makes it an mandatory for a person arrested not to be detained more than twenty four hours and such right of the accused flows from Article 22(2) of the Constitution of India wherein it is laid down that every person who is arrested and detained in custody shall be produced before a nearer magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of the Magistrate. Additionally, once a thing has been prescribed by law to be done in a particular way, it must be done in that way and not in any other way. It is also not in dispute that the power to arrest a person is one thing and arresting such person depriving his personal liberty is another thing. This Court, however, believes that the personal liberty of a person is not only priceless treasure, but also the fundamental right of such person and such right cannot be withheld without recourse to the law. Time and again, it has been held by a plethora of decisions that a person arrested should not be detained in custody beyond twenty four hours without authorization of the competent magistrate. What would be the consequence, if a person arrested is detained beyond twenty four hours has been well answered by the Apex Court in the decision in Director of Enforcement Vrs. Subash Sharma; 2025 SCC On Line SC 240 wherein in a somewhat similar situation, the Apex Court at Paragraph-8 has held as under:-

"8. Once a Court, while dealing with a bail application, finds that the fundamental rights of the accused under Articles 21 and 22 of the Constitution of India have been violated while arresting the accused or after arresting him, it is the duty of the Court dealing with the bail application to release the accused on bail. The reason is that the arrest in such cases stands vitiated. It is the duty of every Court to uphold the fundamental rights guaranteed under Articles 21 and 22 of the Constitution."

5. On a conspectus materials placed on record clearly demonstrates a case in

which the accused-petitioner has been detained in custody beyond twenty four hours, but without any authority and therefore, fundamental right of the petitioner as guaranteed under Article 22(2) of the Constitution of India has been violated which enures to the benefit of the petitioner for his release on bail. In view of the above facts, and taking into consideration the fact of detention of the petitioner beyond twenty four hours, this Court is of the considered view that the petitioner's fundamental being violated, he is entitled to be released on bail.

6. Hence, the bail application of the petitioner stands allowed and the petitioner is allowed to go on bail on furnishing bail bonds of Rs.50,000/- (Rupees Fifty Thousand) only with one solvent surety 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.

7. Accordingly, the BLAPL stands disposed of.