



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.105 of 2006

(In the matter of an application under Section 397 and
401 of the Code of Criminal Procedure, 1973)

Yudhistira Kuldeep

....

Petitioner

-versus-

State of Orissa

....

Opposite Party

For Petitioner : Mr. S.K. Joshi, Advocate

For Opposite Party : Mr. C.R. Swain, AGA

CORAM:

JUSTICE V. NARASINGH

DATE OF HEARING :10.02.2026

DATE OF JUDGMENT: 23.02.2026

V. Narasingh, J.

1. The judgment dated 20.01.2006 passed by the learned Addl. District and Sessions Judge, Nuapada in Criminal Appeal No.32 of 2004 thereby affirming the order of conviction dated 04.08.2004 of the Petitioner passed by the learned S.D.J.M., Nuapada in 2(a) C.C. Case No.69 of 2003 (T.R. Case No.724 of 2003)



under Section 47(a)¹ of the Bihar and Orissa Excise Act, 1915 and imposing a sentence of S.I. for two years and to pay a fine of Rs.5,000/- (Rupees Five Thousands Only) and in default to undergo S.I. for three months, is assailed in this criminal revision.

2. It is the case of the prosecution that on 09.04.2003 at about 10.20 A.M., during patrolling in village Brundapat, the Petitioner was found coming with a rubber tube containing liquor. When a blue litmus paper test was conducted, it turned red, and on further testing by hydrometer, the temperature and strength of the liquor were indicated. Since the same was being carried in an unauthorized manner, it was seized and, on completion of enquiry, P.R. under Section 47(a)¹ of the Bihar and Orissa Excise Act, 1915 was submitted against the accused Petitioner.

3. During the course of trial, the prosecution examined two witnesses, namely P.W.1, the A.S.I., and P.W.2, the S.I. of Excise. After going through the materials on record and rejecting the claim of the Petitioner that, in the absence of independent

¹**47. Penalty for unlawful import, export, transport, manufacture, possession, sale etc :** If any person, in contravention of this Act, or of any rule, notification or order made, issued or given, or of any licence or permit granted, under this Act,

(a) imports, exports, transports, manufactures, collects, possesses or sells [any intoxicant]



witnesses and chemical examination report, the prosecution case ought not to be believed, the learned Trial Court negated the plea of false implication and found the Petitioner guilty of the offence under Section 47(a)¹ of the Bihar and Orissa Excise Act, and directed him to undergo S.I. for two years and to pay a fine of Rs.5,000/- (Rupees Five Thousand only), in default to suffer S.I. for three months. Such order was affirmed by the Appellate Court and is the subject matter of challenge before this Court in revision, as noted above.

4. Heard learned counsel for the Petitioner and learned counsel for the State.

5. At the outset, learned counsel for the Petitioner submits that the incident had taken place almost two decades ago and, taking into account the nature of evidence on record, does not wish to assail the conviction on merits.

Placing reliance on the recent dictum of the Apex Court in the case of **Chellammal and anr. V. State represented by the Inspector of Police**², he submits that it's a fit case for the Petitioner to be

² *Chellammal v. State represented by the Inspector of Police*, 2025 SCC OnLine SC 870



granted the benefit under the Probation of Offenders Act, 1958 (hereinafter referred to as 'P.O. Act').

6. Such submission is opposed by the learned counsel for the State, inter alia, on the ground that there is clinching evidence against the Petitioner and, there being no infirmity, the benefit of the P.O. Act ought not to be extended, though it is fairly submitted that, in terms of Section 11³ of the P.O. Act, there is no embargo on this Court enlarging the accused Petitioner upon application of the P.O. Act.

7. Learned counsel for the Petitioner, Mr. Joshi, on instruction submits that the Petitioner has no criminal proclivity save and except the present case

³ **11. Courts competent to make order under the Act, appeal and revision and powers of courts in appeal and revision.**— (1) Notwithstanding anything contained in the Code or any other law, an order under this Act may be made by any court empowered to try and sentence the offender to imprisonment and also by the High Court or any other court when the case comes before it on appeal or in revision.

(2) Notwithstanding anything contained in the Code, where an order under Section 3 or Section 4 is made by any court trying the offender (other than a High Court), an appeal shall lie to the court to which appeals ordinarily lie from the sentences of the former court.

(3) In any case where any person under twenty-one years of age is found guilty of having committed an offence and the court by which he is found guilty declines to deal with him under Section 3 or Section 4 and passes against him any sentence of imprisonment with or without fine from which no appeal lies or is preferred, then, notwithstanding anything contained in the Code or any other law, the court to which appeals ordinarily lie from the sentences of the former court may, either of its own motion or on an application made to it by the convicted person or the probation officer, call for and examine the record of the case and pass such order thereon as it thinks fit.

(4) When an order has been made under Section 3 or Section 4 in respect of an offender, the Appellate Court or the High Court in the exercise of its power of revision may set aside such order and in lieu thereof pass sentence on such offender according to law:

Provided that the Appellate Court or the High Court in revision shall not inflict a greater punishment than might have been inflicted by the court by which the offender was found guilty.



and that, in the meantime, the Petitioner has never misused the liberty while on bail. It is further submitted that he has home and hearth within the jurisdiction of the Court in seisin and, in this background, he may be enlarged on probation under the P.O. Act.

8. Considering the rival submissions and relying on the judgment of the Apex Court in the case of **Chellammal(supra)**², this Court finds substance and force in the submissions of the learned counsel for the Petitioner and holds that, this is a fit case where the provisions of the P.O. Act are to be invoked.

9. Hence, in the given factual matrix of the case at hand and in view of the evidence on record, while maintaining the conviction recorded against the Petitioner by the learned Trial Court and the Appellate Court but, having regard to the facts and circumstances as noted above, this Court is inclined to direct the release of the Petitioner on probation under Section 4⁴ of the P.O. Act, on conditions to be settled by the Trial Court.

⁴ **4. Power of court to release certain offenders on probation of good conduct.—** (1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding



10. The Criminal Revision is accordingly disposed of.

11. The bail bonds are cancelled and sureties are discharged.

(V. NARASINGH)
Judge

*Orissa High Court, Cuttack,
Dated the 23rd February, 2026/Santoshi*

anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.