



IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL NO.339 of 2026

(In the matter of application under Section 483 of BNSS, 2023).

Jitu Nayak

...

Petitioner

-versus-

State of Orissa

...

Opposite Party

For Petitioner : Mr. D. Panda, Advocate

For Opposite Party : Mr. T.K. Acharya, Addl. PP

CORAM:

JUSTICE G. SATAPATHY

DATE OF HEARING & JUDGMENT:26.02.2026(ORAL)

G. Satapathy, J.

1. This is a bail application U/S.483 of BNSS by the petitioner for grant of bail in connection with PR No.282 of 2024-2025 corresponding to TR Case No.30 of 2025 pending in the file of learned 1st Addl. Sessions Judge-cum-Special Judge under NDPS Act, Khurda for commission of offences punishable U/S.20(b)(ii)(C) of the NDPS Act, on the main allegation of transporting 929 Kgs of Contraband Ganja in a Tata ACE Vehicle and a Motor Cycle.



2. In the course of hearing, Mr. Devashis Panda, learned counsel for the Petitioner by placing the facts submits that since the Contraband article was allegedly found from the Petitioner being carried in an air bag on a Motor Cycle ridden by him, the Investigating Officer should have complied with the provision of Sec. 50 of the NDPS Act, but the IO has not complied with the provision of Sec. 50 of NDPS Act. Mr. Panda further submits about non-compliance of Sec. 52(A) of the NDPS Act and thereby, the benefit thereon should enure to the Petitioner. Mr. Panda further submits that since Contraband article in question was transported on a Motor Cycle and detained by the IO, the Petitioner should not have been detained without a search warrant as the Motor Cycle is not a public transport vehicle and since the non-compliance of the aforesaid provision renders the prosecution vitiated, the satisfaction of conditions of Sec. 37 of NDPS Act by the Petitioner is not at all required. Mr. Panda further submits that even if the prosecution case are taken at its face, since 5Kgs of



Contraband article was recovered from the Motor Cycle in possession of the Petitioner and the quantity being not beyond commercial quantity, Sec. 37 of NDPS Act has no application. On the aforesaid submissions, Mr. Panda by highlighting the pre trial detention of the Petitioner in custody prays to grant bail to the Petitioner.

2.1. On the other hand, Mr. T.K. Acharya, learned Additional Public Prosecutor by highlighting the facts of the case submits that not only the Petitioner was found in conscious possession of 5Kgs of Contraband article, but also he was found escorting a vehicle carrying huge quantity to the tune of 924Kgs of Contraband Ganja and he having failed to satisfy the conditions of Sec. 37 of NDPS Act, the bail application of the Petitioner may kindly be rejected, however, Mr. Acharya could not give valid reply to the plea as advanced by the Petitioner for non-compliance of Sec. 50 & 52(A) of NDPS Act.



3. After having considered the rival submissions upon perusal of record, before dwelling upon the case on merit for consideration of bail to the Petitioner, this Court considers it proper to reiterate that it is a case of search of vehicle, but not of person and that the personal search as contemplated under Sec. 50 of NDPS Act is a question of fact and can be gone into in the trial in view of the law laid down by the Apex Court in ***State of Punjab Vrs. Baldev Singh; (1999) 6 SCC 172*** & ***Vijaysingh Chandubha Jadeja Vrs. State of Gujarat; (2011) 1 SCC 609***, wherein a constitutional Bench of five judges of the Apex Court has held as under:-

(State of Punjab Vrs. Baldev Singh; (1999) 6 SCC 172)

*12. "On its plain reading, Section 50 would come into play only in the case of a **search of a person** as distinguished from **search of any premises** etc. However, if the empowered officer, without any prior information as contemplated by Section 42 of the Act makes a search or causes arrest of a person during the normal course of investigation into an offence or suspected offence and on completion of that search, a contraband under the NDPS Act is also*



recovered, the requirements of Section 50 of the Act are not attracted."

(Vijaysingh Chandubha Jadeja Vrs. State of Gujarat; (2011) 1 SCC 609)

*20. "The mandate of Section 50 is precise and clear viz. if the **person intended to be searched** expresses to the authorized officer his desire to be taken to the nearest gazetted officer or the Magistrate, he cannot be searched till the gazetted officer or the Magistrate, as the case may be, directs the authorized officer to do so.*

*31. "The question **whether or not the procedure prescribed has been followed and the requirement of Section 50 had been met, is a matter of trial. It would neither be possible nor feasible to lay down any absolute formula in that behalf."***

4. Further, in so far non-compliance of Sec. 52(A) of the NDPS Act, this Court considers it profitable to refer to the decision of **Narcotic Control Bureau Vrs. Kashif; 2024 SCC Online SC 3848**, wherein the Apex Court at paragraph 8 & 24 has held as under:-

"8. There has been consistent and persistent view of this Court that in the NDPS cases, where the offence is punishable with minimum sentence of ten years, the accused shall generally be not released on bail. Negation of bail is the rule and its grant is an exception. While considering the application for bail, the



court has to bear in mind the provisions of Section 37 of the NDPS Act, which are mandatory in nature. The recording of finding as mandated in Section 37 is a sine qua non for granting bail to the accused involved in the offences under the said Act. Apart from the granting opportunity of hearing to the Public Prosecutor, the other two conditions i.e., (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that (ii) he is not likely to commit any offence while on bail, are the cumulative and not alternative conditions.

24. Sec. 52-A was inserted only for the purpose of the early disposal of the seized Contraband Drugs and Substances, considering the hazardous nature, vulnerability to theft, constraint of proper storage place etc. There cannot be any two options on the issue about the early disposal of the Contraband Drugs and Substances, more particularly when it was inserted to implement the provisions of International Convention on the Narcotic Drugs and Psychotropic Substances, however **delayed compliance or non-compliance of the said provision by the concerned officer** authorized to make application to the Magistrate **could never be treated as an illegality which would entitle the accused to be released on bail** or claim acquittal in the trial, when sufficient material is collected by the investigating officer to establish that the search and seizure of the Contraband substance was made in due compliance of the mandatory provisions of the Act".



5. In view of the aforesaid decisions, the non-compliance of Sec. 52-A cannot enure to the Petitioner for grant of bail. Be that as it may, the materials on record, however, indicates about the Petitioner being found carrying Contraband Ganja to the tune of 5Kgs on the Motor Cycle in question and escorting another vehicle i.e. Tata ACE in which 924Kgs of Contraband Ganja was recovered and thereby, the quantity of Contraband Ganja allegedly seized in this case is 929Kgs which is much more than the commercial quantity and this Court considers that grant or refusal of bail for commission of offence under NDPS Act involving commercial quantity is governed by Sec. 37 of NDPS Act, which prescribes that no person accused of offence under NDPS Act involving commercial quantity shall be released on bail, where Public Prosecutor opposes such bail application; unless the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence and he is unlikely to commit offence while on bail.



In the aforesaid principle and provision of law, when the materials on record are considered, this Court hardly finds the Petitioner to have satisfied the conditions of Sec. 37 of NDPS Act, which is *sine qua non* for grant of bail for commission of offence under NDPS Act involving commercial quantity. Thus, this Court is not inclined to grant bail to the Petitioner.

6. In the result, the bail application of the petitioner stands rejected. Accordingly, the BLAPL stands disposed of. A soft copy of this order be immediately transmitted to the learned trial Court.

(G. Satapathy)
Judge

*Orissa High Court, Cuttack,
Dated the 26th February, 2026/Priyajit*