



IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.4439 of 2026

Kani Behera

....

Petitioner(s)

Mr. Amlan Shakti Paul, Adv.

-versus-

State of Odisha

....

Opposite Party(s)

Mr. Tej Kumar, ASC

CORAM:

HON'BLE DR. JUSTICE SANJEEB K PANIGRAHI

Order No.

01.

ORDER

04.05.2026

1. This matter is taken up through hybrid arrangement.
2. Heard learned counsel for the Petitioner and learned counsel for the State.
3. The Petitioner, apprehending her arrest in connection with Khurda, P.S. Case No.448 of 2023 corresponding to T.R. No. 70 of 2023 pending in the Court of learned 2nd Addl. Sessions Judge-cum-Special Judge, Khrda for the alleged commission of offences punishable under Sections 21(c)/29 of the NDPS Act, 1985 has filed this petition under Section 482 of the BNSS for release on pre-arrest bail.
4. Without going into the merits of the present petition filed by the Petitioner under Section 482 of the BNSS (erstwhile Section 438 of the Cr.P.C.) seeking direction for pre-arrest bail, this Court is to observe first that whether the petition



under Section 482 of the BNSS is maintainable before this Court without exhausting remedy under the said provision before the Court of Sessions which has concurrent jurisdiction.

5. This Court has earlier decided the similar issue in the case of *Mitu Das and others v. State of Odisha*¹ observing that ordinarily, in case of petition under Section 482 of the BNSS, the remedy before the Court of Sessions ought to be exhausted before invoking the jurisdiction of the High Court.

6. The Supreme Court in the case of *Jagdeo Prasad v. State of Bihar and Ors.*² has categorically held as follows:

“6. However, before parting, we do wish to express our sincere concern with the haste at which the High Court has dealt with this matter. While the scheme of Criminal Procedure Code, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) provides concurrent jurisdiction to the High Court and Sessions Court for entertaining applications for anticipatory bail, this Court has time and again observed that High Court should always encourage exhausting an alternative/concurrent remedy before directly interfering itself. This approach balances the interests of all the stakeholders, first by giving the aggrieved party a round of challenge before the High Court. Second, this approach

¹ vide order dated 26.04.2021 passed in ABLAPL No.5283 of 2021

² 2020 SCC OnLine SC 2108



provides the High Court an opportunity to assess the judicial perspective so applied by the Sessions Court, in concurrent jurisdiction, instead of independently applying its mind from the first go. Further, the High Court fails to record any reason for directly granting anticipatory bail without impleading the appellant-complainant as a party.

7. Having regard to the abovementioned facts and circumstances of the case, the serious nature of the allegations against accused respondents and the gravity of the offences alleged, we are of the view that the High Court was not justified in passing the impugned order granting anticipatory bail to the accused respondents."

7. In the case of **Rameschandra Kashiram Vora & Ors. v. State of Gujarat & Ors.**³, wherein the High Court of Gujarat held as follows:

"9.....I am in respectful agreement with the ratio of these two cases. I am of the opinion that it would be a sound exercise of judicial discretion not to entertain each and every application for anticipatory bail directly bypassing the Court of Session. Ordinarily, the Sessions Court is nearer to the accused and easily accessible and remedy of anticipatory bail is same and under same section and there is no reason to believe that Sessions Court will not act according to law and pass appropriate orders. In a given case, if any accused is grieved, his further remedy to approach the High Court is not barred and he may prefer a substantive application for anticipatory bail under

³ 1986 SCC OnLine Guj. 56



Section 438 or revision application under Section 397 of the Cr. P. C. to the High Court and the High Court would have the benefit of the reasons given by the Sessions Court. It would be only in exceptional cases or special circumstances that the High Court may entertain such an application directly and these exceptional and" special circumstances must really be exceptional and should have valid and cogent reasons for by passing the Sessions Court and approaching the High Court....."

8. In view of the above discussion, the applicant should approach the Sessions Court first then to the High Court like that is adopted in Section 483 of the BNSS (erstwhile Section 439 of the Cr.P.C.) The reasons for approaching the Court of Sessions first may be due to the following:

- i) Whenever concurrent jurisdiction is provided under the statute simultaneously in two courts of which one is superior to the other, then it is appropriate that the party should apply to the subordinate Court first, then he/she may seek his/her remedy in the High Court;
- ii) The Sessions Court will always be nearer and accessible court to the parties. Moreover, considering the work load of the High Courts in the country and the cases of this nature are nothing but contributing to heavy pendency of cases. The applications under Section 483 of the BNSS (erstwhile Section 439 of the Cr.P.C.) often fail to get the required attention because of the docket arising out of such applications filed



under Section 482 of the BNSS (Section 438 of the Cr.P.C.) directly in the High Court by passing the Courts of Sessions;

iii) The grant of anticipatory bail or regular bail requires appreciation, scrutiny of facts and perusal of the entire materials on record. In this context, if the Sessions Court has already applied its mind and passed the appropriate order, it would be easy for the High Court to look into or have a cursory glance of the observation made by the Sessions Court and dispose of the case with expedition.

9. However, under the NDPS Act, which is a special-contained and comprehensive code, designed to regulate and control offences relating to narcotic drugs and psychotropic substances, and to ensure stringent procedural and substantive safeguards in their adjudication. The Act confers exclusive jurisdiction upon the Special Courts constituted thereunder, empowering them to deal with all aspects of trial, including cognizance, inquiry, and adjudication of offences under the said statute. It has further been authoritatively echoed in the case of *Ter Majhi v. State of West Bengal 2014*⁴, with the following:-

“100..... The power of Section 438 of the Code of Criminal Procedure, 1973 to be unavailable to a Special Court constituted under

⁴ 2014 SCC Online Cal 7684



the NDPS Act, 1985 was required to be taken away expressly by the NDPS Act, 1985 itself. Such was not the position. Section 36-C of the NDPS Act, 1985 empowered the Special Court constituted under the NDPS Act, 1985 to exercise powers under Section 438 of the Code of Criminal Procedure, 1973.

..... we would, therefore, answer the Reference by stating that a Special Court constituted under Section 36 of the NDPS Act, 1985 was competent to entertain a pre-arrest bail petition under Section 438 of the Code of Criminal Procedure, 1973.”

10. In view of the above, the Petitioner is granted interim protection for a period of three weeks to approach the Court of Sessions for seeking similar relief and the Court of Sessions/ Special Court (as the case may be) shall list this matter as early as possible before the expiry of three weeks of protection granted to the Petitioner.

11. In view of the above observation and direction, the ABLAPL is disposed of.

(Dr. Sanjeeb K Panigrahi)
Judge

Signature Not Verified


Digitally signed by:
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Reason: Authentication
Location: High Court of Orissa
Date: 09-May-2026 16:18:15