



IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLA No.711 of 2025

Chanti Suresh

.....

Appellant

Represented By Adv. –
Mr. Shyam Manohar

-versus-

***Union of India (through
NCB)***

.....

Respondent

Represented By Adv. –
Mr. Karunakar Nayak,
Special Counsel for
NCB

CORAM:
THE HON'BLE MR. JUSTICE ADITYA KUMAR
MOHAPATRA

ORDER

13.03.2026

I.A No.1455 of 2025

Order No.

10. 1. Heard learned counsel appearing for the Appellant-Petitioner as well as Mr.K.K.Nayak, learned Special Counsel representing the NCB. Perused the records as well as the appeal memo and the impugned judgment.
2. The present I.A arises out of Criminal Appeal No.711 of 2025 which has been filed at the instance of the Appellant-Petitioner challenging the impugned judgment of conviction and order of sentence dated 29.04.2025 passed in T.R No.47 of 2018 by the learned Additional Sessions Judge-cum-Special Judge, Malkangiri, thereby convicting the Appellant for commission of offence punishable under section 20(b)(ii)(C) of the NDPS Act



and sentencing him to undergo R.I for 15 years and to pay a fine of Rs.1,00,000/- (Rupees One Lakh), and in default of payment of fine to undergo further R.I for 6 months. The present I.A has been filed at the instance of the Appellant-Convict under section 389(1) of the Cr.P.C which corresponds to section 430(1) of the B.N.S.S for suspension of the sentence and to release the Appellant-Petitioner on bail.

3. Learned counsel appearing on behalf of the Appellant-Petitioner at the outset submitted that the impugned order suffers from various errors of law and that the imposition of punishment is not in consonance with Section 32-B of the NDPS Act. He further submitted that the Appellant-Petitioner has already undergone sentence of up to 8 years and that the maximum sentence that can be imposed in the event the judgment of the learned Appellate court is upheld, is 10 years. In such view of the matter, learned counsel for the Appellant-Petitioner contended that the Appellant-Petitioner has already undergone a substantial period of his sentence.

4. Learned counsel for the Appellant-Petitioner further submitted that since the present appeal is of the year 2025, taking into consideration the fact that several year-old appeals are pending before this court for hearing, the chances of the present appeal being heard in the near future is very bleak. Thus, he contended that by the time the appeal matures for hearing, the Appellant-Petitioner would have completed the entire period of sentence imposed by the learned trial court. As such, there is every possibility that unless the Appellant-Petitioner is released on bail, the appeal is likely to become infructuous due to the



passage of time.

5. With regard to the merits of the appeal, learned counsel for the Appellant-Petitioner contended that there are several infirmities in the judgment of the learned trial court which are required to be examined by this court in course of hearing of the present appeal. It was submitted that the Appellant-Petitioner has a very good case and that the ultimate chances of the Appellant-Petitioner being acquitted is very high. On merits of the appeal, learned counsel for the Appellant-Petitioner submitted that the PW1, who happens to be an independent witness, has completely denied the allegation made by the prosecution, including the search and seizure. Similarly, PW2, has been declared as an independent witness by the prosecution, which is not permissible in law as the PW2 is a Sub-Inspector of Police at Orkel Police Station. Therefore, it was contended that by no stretch of the imagination can it be construed that the PW2 is an independent witness to the occurrence as mandated in Section 100 of the Cr.P.C and Section 50 of the NDPS Act. In the aforesaid context, he further argued that a person can be treated to be an independent witness provided he is in no way connected with the prosecution and that he had no prior knowledge of the allegation. So far PW2 is concerned, by referring to his evidence, learned counsel for the Appellant-Petitioner contended that he has admitted in his evidence that he had prior intimation about the incident.

6. Learned counsel for the Appellant-Petitioner further argued that the PW2, PW3, PW4 and PW6 have not deposed before the Court that the Appellant was present at the spot or in the vehicle/truck from which the contraband articles were seized. Thus, it was



contended that the identification of the present Appellant/ accused is seriously doubtful. Additionally, learned counsel for the Appellant-Petitioner argued that the impugned judgment of the learned Appellate Court is vitiated due to non-compliance of the mandatory provision of Section 50 of the NDPS Act. In the aforesaid context, learned counsel for the Appellant-Petitioner took this Court through the relevant portions of the evidence to impress upon this Court that the mandatory provision of Section 50 of the NDPS Act has not been complied and, as such, the entire impugned judgment is vitiated. Moreover, no consent of the convict has been taken in writing, as is required under Section 50 of the NDPS Act, and that such consent is mandatory as per the NCB guidelines. He further alleged that such fact has been admitted by PW6 in his evidence. It was also argued that there is no independent witness to testify with regard to compliance of Section 50 of the NDPS Act.

7. Similarly, learned counsel for the Appellant-Petitioner argued that the impugned judgment of the learned appellate court is vitiated due to non-compliance of Section 52-A of the NDPS Act. In the aforesaid context, he referred to the evidence of PW3, PW4, and PW6 who have deposed that the sampling was done at the spot. The requirement of law is that the sampling is to be done before the concerned magistrate. Such procedure having not been followed, it is argued that the impugned judgment is unsustainable in law. In the aforesaid regard, learned counsel for the Appellant-Petitioner, by referring to the evidence of the witnesses, made an attempt to demonstrate that different witnesses have given different versions with regard to the sampling of the contraband



articles.

8. In course of his argument, learned counsel for the Appellant-Petitioner tried to put forth before this Court that the complainant is the person who received secret information, conducted personal search. In fact, he is the weigh-man who he has done the sampling at the spot, produced the accused before the magistrate and sent the sample to the lab. In the aforesaid context, learned counsel for the Appellant-Petitioner referred to the judgment of the Hon'ble Supreme Court in ***Mukesh Singh vs. State (Narcotic Branch of Delhi)*** reported in ***(2020) 10 SCC 120***, wherein the Hon'ble Apex Court has expressed serious doubts over the prosecution case and highlighted the prejudice caused to the accused. He also referred to the judgment of the Coordinate Bench of this Court in ***Ajay Rajaram Bhore vs State of Odisha*** (in I.A No.2960 of 2024 arising out of CRLA No.526 of 2024), decided vide judgment dated 19.09.2025. Referring to the aforesaid judgment, the learned counsel for the Appellant-Petitioner contended that the learned coordinate Bench, while considering the release of the accused on bail in the pending appeal, in an identical factual scenario, directed release of the convict on bail by referring to the judgment of the Hon'ble Supreme Court in ***Mukesh Singh's case (supra)***.

9. Mr. Nayak, learned Special Counsel appearing for the NCB on the other hand objected to the release of the Appellant-Petitioner on bail. In course of his argument, the learned counsel for the Respondent-NCB contended before this court that the Appellant-Petitioner has already been found guilty by the learned Appellate Court on the basis of the evidence adduced and



materials produced before the learned Appellate Court. On this ground, the learned counsel for the Respondent-NCB submitted that there exists a prima facie case against the present Appellant-Petitioner and tried to explain many of the grounds raised by the Appellant-Petitioner in course of hearing of the bail application. A detailed written note of submission has also been filed on behalf of the NCB. In his argument, learned counsel appearing for the Respondent-NCB tried to meet all the grounds raised by the Appellant and an attempt has been made therein to not only counter the argument of the Appellant-Petitioner but also to justify the judgment of conviction and order of sentence, which are the subject matter of the pending appeal. The learned counsel for the Respondent further expressed his apprehension that in the event the Appellant-Petitioner is released on bail, there is every likelihood that he might abscond. He further contended that there is also a likelihood that he might indulge in similar type of offenses in the event he is released on bail by this Court. He further submitted that taking into consideration the nature and gravity of the offense and its impact on the society, and further taking into consideration the fact that the Appellant-Petitioner has already been found guilty by the learned Appellate Court and he has been sentenced to undergo imprisonment for 15 years, the application filed by the Appellant-Petitioner for his release on bail does not deserve any consideration by this court, at this stage. Hence, the learned counsel for the Respondent-NCB opposed the release of the Appellant-Petitioner on bail and prayed before this Court that the bail application be rejected.

10. On a careful analysis of the submissions made by learned



counsels appearing for both sides, on a close scrutiny of the material placed before this Court including the evidence recorded during trial and upon a thorough examination of the impugned judgment and order of sentence, this Court is prima facie satisfied that the Appellant-Petitioner has raised certain valid grounds in the appeal which needs to be considered by the Appellate Court. Moreover, taking into consideration the fact that the Appellant-Petitioner has already undergone 8 years of R.I and that the chances of the appeal being heard in the near future is very bleak, this Court is of the considered view that unless the Appellant-Petitioner is released on bail the appeal preferred by the Appellant may become infructuous with the passage of time. Taking into consideration the fact that the Appellant-Petitioner has already undergone 50% of the sentence imposed by the learned appellate court, this Court is inclined to release the Appellant-Petitioner on bail.

11. Accordingly, it is directed that the Appellant-Petitioner be released on bail subject to the him furnishing a bail bond of Rs.1,00,000/- (Rupees One lakh) with two solvent sureties each of the like amount to the satisfaction of the Court in seisin over the matter. The release of the Appellant-Petitioner shall also be subject to the following additional conditions:-

- i) while on bail he shall not indulge in similar criminal activities.
- ii) he shall surrender before the learned trial court as and when it would be directed by the Appellate Court.
- iii) he shall not leave the country under any circumstances



and at the time of his release, he shall deposit his travel documents including passport, if any, before the learned Appellate Court. In the event the Appellant-Petitioner does not have any passport, he shall furnish an affidavit to that effect before the learned Appellate Court.

In addition to the above, it is open to the learned Appellate Court to impose any specific conditions as would be deemed just and proper.

This Court further makes it clear that the observations made hereinabove are only for the purpose of consideration of the bail application of the Appellant-Petitioner and the appeal preferred by the Appellant-Petitioner shall be considered on its own merit, without being influenced by any of the aforesaid observations.

12. Accordingly, the I.A application stands disposed of.

(A.K. Mohapatra)
Judge

Anil