



IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.5815 of 2026

CNR No. ODHC010373462026

1. Basanti Modi **Petitioners**
2. Nadia Modi @
Nandia Modi

Mr.A. Tripathy, Advocate

-versus-

State of Odisha **Opposite Party**

Mr.C.R. Swain, AGA

Mr.N.P.Samal, Advocate for the Informant

CORAM: JUSTICE V. NARASINGH

Order
No.

ORDER
14.08.2026

02. 1. Heard learned counsel for the Petitioners and learned counsel for the State.

2. Notwithstanding that the allegation is under section 103(1) of BNS, 2023, this Court is apprised that the Investigating Agency has enlarged the Petitioners by applying the provision under section 35(3) of BNSS, 2023. For convenience of reference, the provision of sub-sections (1) & (3) of Section 35 of BNSS is extracted hereunder:

"35. When police may arrest with warrant.

(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person —

(a) who commits, in the presence of a police officer, a cognizable offence; or



(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable **with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if** the following conditions are satisfied, namely:—

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary—

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured,

and the police officer shall record while making such arrest, his reasons in writing: Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest; or

xxx xxx xxx

"(3) The police officer shall, in all cases where the arrest of a person is not required under sub-section (1) issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable



offence, to appear before him or at such other place as may be specified in the notice”.

3. And the notices for appearance issued to the Petitioners are on record. Referring to the same, it is submitted by learned counsel for the Petitioners that since the charge sheet has been filed *inter alia* under section 103(1) of BNS, there is every apprehension of arrest notwithstanding that the Petitioners were granted the benefit of section 35(3) of BNSS.

4. It is apt to note that the Petitioners are named accused.

5. Learned counsel for the State seeks an adjournment to obtain instruction.

6. On perusal of the Case Diary, it is seen that one Sri M. Bhukta, the then Inspector of Police, Ghasipura Police Station is the I.O and Sri Prasanta Kumar Behera, OPS, EX-SDPO Anandpur and DSP HDQR is the Supervisory Officer and charge sheet in the case at hand has been submitted with the approval of the then Superintendent of Police, Keonjhar. This Court is intimated that the learned Public Prosecutor has also approved the issuance of notice under section 35(3) of BNSS.

7. In the peculiar factual matrix of the case at hand, keeping in view the provisions contained in sections 35(1) & 35(3) of BNSS, let the IO, the



Supervisory Officer & the Superintendent of Police, Keonjhar and the Public Prosecutor file their independent affidavit indicating the circumstances under which they have resorted to the provisions of section 35(3) of BNSS when ex facie the allegation is under section 103(1) of BNS, which *inter alia* provides punishment for death or imprisonment for life.

The affidavits shall be filed within two weeks.

8. Let the matter be placed on Board on 7.9.2026.

9. In the meanwhile, no coercive action shall be taken against the Petitioners in connection with the aforesaid case till the matter is taken up.

10. Registry is called upon to send a copy of this order to the Director of Prosecution, Odisha.

(V. NARASINGH)
Judge

Basu