



IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.11077 of 2025

Yaya Khan @ Mohammad Petitioner
Yousuf

*Mr. A.K. Mohapatra,
Advocate*

-versus-

State of Odisha Opp. Party

*Miss Suvalaxmi Devi,
Addl. Standing Counsel*

**CORAM:
JUSTICE S.K. SAHOO**

ORDER

12.12.2025

Order No.

02. This matter is taken up through Hybrid arrangement (video conferencing/physical mode).

Learned counsel for the State has produced written instruction dated 27.11.2025, received from the Inspector in-charge of Air Port police station, Bhubaneswar UPD, wherein it is mentioned that though during verification, no other criminal antecedents of the petitioner was detected except the present case. However, considering his past conduct, there is a reasonable apprehension that he is capable of committing further illegal or unauthorized travel within India or abroad by using forged or fraudulently obtained documents. After release on bail, he may again move to different parts of India or outside the



country by using such fake passports. Moreover, during the deportation process, ensuring his availability may not be possible as he does not possess a verified or permanent residential address in Cuttack or anywhere else in India, which may cause serious hindrance to the lawful deportation proceedings. The written instruction is taken on record.

Learned counsel for the petitioner submitted that the petitioner is in judicial custody since 21.06.2025 and in the meantime, 1st charge sheet has been submitted on 21.08.2025 under sections 338/339/336(2)/319(2)/319(4)/336(3)/340(2) of BNS and section 12 of the passports Act and sections 14/14(A) of Foreigners Act, 1946. Learned counsel further submits that all the offences are triable by Magistrate. He has placed reliance on the decision of the Hon'ble Supreme Court in case of **Ritu Chhabaria -Vrs.- Union of India reported in (2024) 12 Supreme Court Cases 116**, the Hon'ble Court held as follows:

34. In the instant case, it is clear from the facts that during the pendency of the investigation, supplementary charge-sheets were filed by the investigation agency just before the expiry of 60 days, with the purpose of scuttling the right to default bail



accrued in favour the accused. This factual position was missed by the trial court, and instead of offering default bail to the accused, the trial court mechanically accepted the incomplete charge-sheets filed by the investigating agency, and further continued the remand of the accused beyond the maximum period specified. The investigating agency and the trial court, thus, failed to observe the mandate of law, and acted in a manner which was manifestly arbitrary and violative of the fundamental rights guaranteed to the accused.

35. Even at the cost of repetition, we find it pertinent to mention that the right of default bail under Section 167(2)CrPC is not merely a statutory right, but a fundamental right that flows from Article 21 of the Constitution of India. The reason for such importance being given to a seemingly insignificant procedural formality is to ensure that no accused person is subject to unfettered and arbitrary power of the State. The process of remand and custody, in their practical manifestations, create a huge disparity of power between the



investigating authority and the accused. While there is no doubt in our minds that arrest and remand are extremely crucial for the smooth functioning of the investigation authority for the purpose of attaining justice, however, it is also extremely important to be cognizant of a power imbalance. Therefore, it becomes essential to place certain checks and balances upon the investigation agency in order to prevent the harassment of accused persons at their hands".

Learned counsel for the State seeks for an adjournment to ascertain about the status of investigation after the submission of 1st charge sheet and whether any specific terms and conditions can be imposed on the petitioner for his release on bail so that there would be no hindrance to the trial of the case.

List this matter on 19.12.2025.

(S.K. Sahoo)
Judge