



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.877 of 2025

Babuni@Rajesh Mohapatra **Petitioner**
Mr. L. Mahapatra, Advocate

-Versus-

State of Odisha **Opposite Party**
Mr. S.K. Swain, AGA

CORAM:
MR. JUSTICE R.K. PATTANAIK

ORDER
08.12.2025

Order No.

01. 1. Heard Mr. Mahapatra, learned counsel for the petitioner and Mr. Swain, learned AGA for the State.
2. Instant revision is filed by the petitioner challenging the impugned order dated 10th October, 2025 passed in connection with CMC Case No.880 of 2025 by the learned Additional DCP-Cum-Executive Magistrate, Bhubaneswar and further to direct his release on execution of PR Bond necessary in the interest of justice.
3. Mr. Mahapatra, learned counsel for the petitioner refers to a copy of the application as at Annexure-2 with the submission that the petitioner belongs to a poor family residing in a thatched house over a Government land and his parents and relatives do not have any landed property either, hence, therefore, he is unable to furnish the solvent surety as has been directed by the learned court below. The further submission is



that the petitioner is in custody on and from 13th June, 2025 and therefore, he should be directed to go on bail. The contention is that any such action under Section 129 BNSS is a preventive measure and not punitive in nature and therefore, the petitioner, who has remained in custody since the month of June, 2025, should be directed to be immediately released accepting PR Bond from him in the facts and circumstances of the case.

4. Mr. Swain, learned AGA for the state submits that there is no error or any illegality committed by the learned court below, since as per the impugned order at Annexure-1, the petitioner has only been directed to execute a bond for an amount of Rs.10,000/- and to furnish two solvent sureties for the like amount and to show good behaviour for a period of two months apparently for having criminal antecedents.

5. In course of hearing, Mr. Mahapatra, learned counsel for the petitioner submits that the petitioner was arrested in connection with the proceeding under Section 129 BNSS, which is impermissible under law and while advancing such an argument, cites the decision of this Court in **Abdul Naim Vs. State of Orissa 2000 Criminal Journal 1888**. The further submission is that no ground is stated to detain the petitioner, hence, therefore, he should have been discharged but instead the application at Annexure-2 having been filed, it was not entertained by the learned court below leading to the passing of the impugned order at Annexure-1 and in that connection Mr. Mohapatra, learned counsel placed reliance on a decision of this Court in CRLREV No.471 of 1982 decided on 20th March,



1985. The contention is that the petitioner could not have been arrested and kept behind the bar with a proceeding under Section 129 BNSS initiated and that apart, considering the fact that he is not solvent and unable to manage execution of a bond with sureties, it was unjustified on the part of the learned court below to direct detention in passing the impugned order dated 10th October, 2025 i.e. Annexure-1.

6. Section 129 BNSS stipulates that an Executive Magistrate upon receiving information about any person residing within his local jurisdiction, who is having antecedents and a habitual offender and has attempted to commit or abate commission of any such offences mentioned therein or also a desperate offender dangerous to be at large without security and hazardous to the community may require him to execute a bail bond for his good behavior for such period not exceeding three year. On a reading of the above provision, it is made to understand that upon a satisfaction reached at considering the history of a person involved in criminal cases, an Executive Magistrate shall have the powers to direct him to execute a bond for a period specified therein.

7. In the case at hand, it is submitted by Mr. Mohapatra, learned counsel for the petitioner that the petitioner is involved in criminal cases and in almost all, he has been granted bail. In view of the criminal antecedents, as it appears, the learned court below upon receiving intimation about the same initiated the action under Section 129 BNSS and it has led to the passing the impugned order at Annexure-1. As far as the claim of the



petitioner having been arrested by the order of the learned court below while initiating action under Section 129 BNSS is concerned, there is nothing on record to reach at such a conclusion. Mr. Mohapatra, learned counsel for the petitioner reiterates that the petitioner was arrested by the orders of the learned Executive Magistrate and is detained at present ever since the month of June, 2025. In fact, the Court in **Abdul Naim** (supra) has held that arrest of any such person under Section 110 and 113 Cr.P.C. would be without jurisdiction. The action under Section 129 BNSS is more or less of similar nature and as a preventive measure, the execution of a bond from a criminal offender is demanded but it does not prescribe arrest of the offenders. In fact, the proceeding under Section 129 BNSS is only stipulates that an offender involved in criminal cases a desperate character is directed to execute a bond to maintain good behavior for a specific period. The Court is in agreement with the contention of Mr. Mohapatra, learned counsel that no such provision of arrest of a person is provided while dealing with a case under Section 129 BNSS. However, it has to be held that in case, such a person has been directed to be execute a bond in terms of Section 129 BNSS but failed to do so, the Executive Magistrate may be left with no option except to detain him in custody. If the contention of Mr. Mahapatra, learned counsel is correct and as it has been claimed that the petitioner has been arrested by the orders of the learned court below, the same is not permissible under law and that he shall have to be released forthwith In other words, in case, where a person is arrested while following an action in



terms of Section 129 BNSS, he shall have to be discharged since such arrest is illegal and such a view has already been expressed by this Court in **Abdul Naim** (supra).

8. Mr. Mahapatra, learned counsel for the petitioner submits that the petitioner was in fact in judicial custody in connection with Capital P.S. Case No.263 of 2025 and at that time, the learned court below issued a show cause notice to reply. It is informed to the Court that the petitioner was arrested in the said case on 10th June, 2025 and was directed to submit show cause on 13th June, 2025. If such is the case, demanding a show cause under Section 129 BNSS in itself cannot be led to a conclusion that the petitioner is arrested. It may be that the petitioner was arrested in a criminal case and in custody at the relevant point of time when show case was issued. Nevertheless, if the petitioner is shown to have been arrested by the learned court below, in view of the discussion herein above, such arrest shall have to be held as illegal and in that case, he is required to be discharged immediately.

9. As regards the other claim that the petitioner belongs to a poor family and has been no permanent residence, rather, staying in a thatched house situate over a piece of Government land and his parents or any other relatives do not have any property to mortgage and hence, he is not solvent enough to furnish the surety, according to the Court, such claim has not been dealt with by the learned court below and therefore, an inquiry is necessary. On a reading of Section 129 BNSS and other provisions related thereto, it is the bounden duty of the



Executive Magistrate to enquire for the solvency as well and in certain circumstances, he may direct release on personal PR Bond in the interest of justice. Such an exercise has not been undertaken by the learned court below in the case at hand, hence, therefore, a direction is required in that regard. Considering the submissions of learned counsel for the respective parties and the plea of the petitioner, who is in custody from 13th June, 2025 in an action under Section 129 BNSS, a plea, subject, however, to verification, the Court reaches at a conclusion that a direction is necessary for the learned court below to consider modification of the bond conditions even with a release on PR bond and in case, there is an arrest as it is claimed, which is held to be impermissible, to discharge him forthwith.

10. Accordingly, it is ordered.

11. In the result, the revision petition stands disposed of with the direction as aforesaid to be complied with as soon as possible preferably within a period of ten days upon receiving a copy of the above order. It is further directed that the learned Additional DCP-Cum-Executive Magistrate, Bhubaneswar in case finds that the petitioner is not solvent, who having criminal antecedents, upon reaching that a subjective satisfaction at the end of such inquiry, to direct his release on execution of a PR bond instated of insisting upon a bond of Rs.10,000/- with two solvent sureties. It is further directed that if in case, the petitioner has been arrested in connection with the proceeding under Section 129 BNSS, as has been pleaded



on record, the learned court below shall do well to discharge him without further delay.

12. Issue urgent certified copy of this order as per rules.

(R.K. Pattanaik)
Judge

Balaram