



IN THE HIGH COURT OF ORISSA AT CUTTACK

AFR

CRLREV No.954 of 2025

Jamir Miya & Another Petitioners

Mr. Basudev Pujari, Advocate

-Versus-

State of Odisha Opposite Party

Mr. Pradeep Kumar Sahoo, ASC

CORAM:

JUSTICE R.K. PATTANAIK

DATE OF HEARING: 09.12.2025

DATE OF JUDGMENT:15.12.2025

1. Instant revision filed under Section 438 read with Section 442 BNSS is at the behest of the petitioners challenging the impugned order dated 6th November, 2025 passed in connection with Special G.R. Case No.185 of 2024 by the learned Additional Sessions Judge-cum-Special Judge, Malkanagiri arising out of Mathili P.S. Case No.257 of 2025, whereby, an application under Section 167(2) Cr.P.C. read with Section 187(2) BNSS demanding default bail by them was rejected on the grounds inter alia that such decision is not in accordance with law and hence, liable to be interfered with and set act naught.

2. The prosecution case in brief is that on 6th December, 2024 at the about 2.00 PM, the SI of Police along with other staff were performing checking duty at Govindpalli check post



and at that time, found a four-wheeler bearing Registration No.CG-15-CV-3171 arriving towards them in high speed and hence, was stopped and in course of inspection of the same, three polythene bags were inside whereas one packet was kept in its dickey emitting smell of Ganja and as a result, 107 Kg 300 Grams of Ganja was recovered and ultimately, seized and thereafter, report was lodged as per Annexure-1 leading to Mathili P.S. Case No.257 dated 6th December, 2024 being registered.

3. In connection with the alleged incident and the case registered under Section 20(b)(ii)(C) of the NDPS Act, the petitioners were arrested and produced before the learned court below and the application moved by them thereafter for bail was rejected. It is pleaded on record that the petitioners moved BLAPL Nos.1568 and 1596 of 2025 before this Court and the same were also rejected and in the meantime, with the closure of investigation, the chargesheet was filed under the said offence before the court of learned Additional Sessions Judge-cum-Special Judge, Malkangiri in Special G.R. Case No.185 of 2024 but without enclosing the chemical examination report, as a result of which, by order dated 1st July, 2025, the court below directed the IO to submit the same for the purpose of hearing on the point of charge. Since, the chemical examination report was not filed along with the chargesheet despite the Court's order dated 1st July, 2025, the petitioners moved an application under Section 167(2) Cr.P.C. read with Section 187(2) BNSS seeking



default bail pleading that they are entitled to the same but it was rejected vide Annexure-4, which is presently under challenge.

4. Heard Mr. Pujari, learned counsel for the petitioner and Mr. Sahoo, learned ASC for the State.

5. According to Mr. Pujari, learned counsel for the petitioners, denial of default bail by the learned court below to the petitioners is contrary to law and also facts on record and against the settled judicial precedents and therefore, deserves to be set aside. The further submission is that the learned court below miserably failed to appreciate the settled legal position laid down by the Apex Court to the effect that filing of the chargesheet without annexing a chemical examination report to it in an NDPS case is an incomplete one and as a result, the petitioners acquired an indefeasible right to the statutory bail under Section 167(2) Cr.P.C. read with Section 187(2) BNSS. The contention is that the impugned order at Annexure-4 suffers from patent illegality, arbitrariness and non-application of mind, inasmuch as, the learned court below ignored the fact that despite repeated directions, the IO failed to produce the chemical examination report and therefore, such a right to default bail had been crystalized. Mr. Pujari, learned counsel would further contend that non-filing of the chemical examination report with the chargesheet directly affects the validity of the investigation, particularly, in an NDPS case, where the nature, identity and purity of the seized contraband substance



is required to be scientifically established and without the same, it is incomplete and therefore, the petitioners, who have been arrested under Section 20(b)(ii)(C) of the NDPS Act are entitled to default bail in absence of any such material on record to conclusively hold that the seizure substance is nothing but Ganja. Lastly, it is contended that under the above circumstances, incarceration of the petitioners despite incomplete chargesheet is violative of Article 21 of the Constitution of India rendering the impugned order at Annexure-4 unconstitutional and hence, liable to be quashed directing their release from judicial custody by a default bail.

6. On a contrary, Mr. Sahoo, learned ASC for the State submits that the chargesheet has been filed within the statutory period of 180 days and of course, it was not accompanied with the chemical examination report, however, on such ground, the petitioners cannot demand release in terms of Section 167(2) Cr.P.C. read with Section 187(2) BNSS. The submission is that huge quantity of contraband Ganja has been recovered and seized in the immediate presence of the petitioners, while being transported in a four-wheeler and the same is revealed from the materials on record and even though there is no chemical examination report, it cannot be said that the investigation is incomplete, or for that matter, the chargesheet filed in connection with the case. The contention of Mr. Sahoo, learned ASC is that the experience possessed by the police officials and the IO, who



were on duty at the relevant point of time, could easily identify the contraband substance as Ganja which in normal course of things would be possible and therefore, even in absence of a chemical examination report received by the learned court below and the same having not been submitted along with the chargesheet, the claim that the chargesheet is incomplete is unacceptable and on such premise, the petitioner cannot demand default bail and hence, the learned court below did not err or commit any illegality in passing the impugned order at Annexure-4.

7. In course of hearing, Mr. Pujari, learned counsel for the petitioners produced the copies of the FIR and chargesheet and also the order sheets of the learned court below as at Annexures-1, 2 and 3 respectively to show and satisfy the Court that filing of the chemical examination report was necessary in order to identify the nature of contraband substance whether to be Ganja and in absence of any such report, there is no complete investigation. In support of contention advanced, Mr. Pujari, learned counsel cited the following decisions, such as, **Vinay Kumar @ Vicky Vrs. State of Haryana** in CRR No.712 of 2021 (O&M) dated 14th October, 2021; **Ajay Singh Vrs. State of Odisha** in CRLREV No.312 of 2022 dated 2nd September, 2025; and order of the Apex Court dated 19th March, 2024 in **Hanif Ansari Vrs. State (Govt. of NCT of Delhi)** to submit that the petitioners are eligible and entitled to go on default bail as in identical situation, such relief has been extended in the



cases referred to hereinabove. The further submission is that in view of the Apex Court's order in SLP(C) No.15293 of 2023 in **Hanif Ansari** (supra), the issue related to filing of the chargesheet without any such scientific report within the time stipulated under Section 167(2) Cr.P.C. read with Section 36-A of the NDPS Act, whether, entitles an accused to default bail is pending consideration before a larger Bench in SLP(C) No.5724 of 202 (**Directorate of Enforcement Vrs. Manpreet Singh Talwar**) as on today and regard being had to the same, this Court in **Ajay Singh** (supra) allowed the accused therein to go on default bail. It is contended that the petitioners are equally entitled to compulsory bail since the investigation is incomplete and therefore, the learned court below was required to release them invoking Section 167(2) Cr.P.C. read with Section 187(2) BNSS.

8. In response to the above, Mr. Sahoo, learned ASC for the State refers to a decision of Apex Court in **Central Bureau of Investigation Vrs. Kapil Wadhawan and another (2024) 3 SCC 734** to contend that non-filing of any such document like the chemical examination report cannot be a ground to allow the petitioners to go on default bail as held therein. It is further submitted that the matter before the larger Bench in **Manpreet Singh Talwar** (supra) is admittedly awaiting disposal as it was last listed on 12th August, 2025. It is contended that in the above case, the Apex Court by order dated 12th May, 2023 clarified that any such order on default bail shall be considered in terms of



Section 167(2) Cr.P.C. independent of and without relying on the judgment dated 26th April, 2023 in **Ritu Chhabaria Vrs. Union of India & others** in Writ Petition (Criminal) No.60 of 2023 recording the submission therein that Union of India was contemplating to file review against the same. It is further submitted that in **Hanif Ansari** case, the contraband substance allegedly seized was Heroin and therein, the chargesheet was filed without the FSL report and on account of divergent view expressed by the Apex Court, the matter was referred to the larger Bench and the same is pending in **Manpreet Singh Talwar** (supra). According to Mr. Sahoo, learned ASC for the State in view of the order dated 12th May, 2023 with the clarification issued by the Apex Court on grant of default bail under Section 167(2) Cr.P.C. corresponding to Section 187(2) BNSS is to be independently examined without following the judgment in **Ritu Chhabaria**. Furthermore, in view of the decision in **Kapil Wadhawan** (supra), the State's reply is that non-production of the chemical examination report or even if it not filed along with the chargesheet cannot lead to a conclusion that the chargesheet is incomplete. Furthermore, a decision in **Satpal Singh Vrs. State of Punjab (2018) 13 SCC 813** is cited by Mr. Sahoo, learned ASC in support of the contention advanced against release of the petitioners on default bail. A decision of this Court in **Deepak Parida and another Vrs. State of Odisha 2019 SCC OnLine Ori 126** is cited by the State to contend that the petitioners are not entitled to bail. Lastly, it is contended that in **Ajay Singh** (supra), the



chargesheet had not been filed within the stipulated period which was also one of the considerations to allow the accused therein to go on default bail though with a reference to the Apex Court decision in **Ritu Chhabaria** (supra) and having regard to the fact that the matter is subjudice before the larger Bench.

9. In **Ritu Chhabaria** (supra), the Apex Court held that supplementary chargesheet was filed just before expiry of 60 days with a purpose to scuttle the right to default bail accrued in favour of the accused, wherein, the investigation was held to be incomplete and directed the accused to be released under Section 167(2) Cr.P.C. with the conclusion that such an indefeasible right is not merely a statutory right but a fundamental right that flows from Article 21 of the Constitution of India. The said decision of the Apex Court is at present pending before the larger Bench in the case of **Manpreet Singh Talwar** by the order of the Apex Court dated 19th Mach, 2024 in **Hanif Ansari** (supra). This Court in **Ajay Singh** had taken judicial notice of the fact that the matter is pending before the larger Bench and in view of the fact that the chargesheet was filed on 182nd day and beyond the statutory period directed him to go on bail. In so far as the direction of the Apex Court in **Manpreet Singh Talwar** case by order dated 12th May, 2023 is concerned, any such grant of default bail under Section 167(2) Cr.P.C. was directed to be independently examined without relying on the decision in **Ritu Chhabaria** (supra). The above clarification by the Apex



Court in **Manpreet Singh Talwar** case had not been brought to the notice of the Court in **Ajay Singh** (supra), nevertheless, the accused therein was allowed to go on default bail since the chargesheet was filed after the stipulated period of 180 days. So, rigour of law in view of the clarification issued in **Manpreet Singh Talwar** case is that grant of statutory bail to an accused shall have to be considered and examined by not following the decision in **Ritu Chhabaria** (supra).

10. In **Kapil Wadhawan** (supra), the Apex Court while dealing with case, wherein, default bail was demanded under Section 167(2) Cr.P.C. summed up the discussion in the following words.

“23. The benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to the offender only when a charge-sheet is not filed and the investigation is kept pending against him. Once however, a charge-sheet is filed, the said right ceases. It may be noted that the right of the investigating officer to pray for further investigation in terms of sub-section (8) of Section 173 is not taken away only because a chargesheet is filed under sub-section (2) thereof against the accused. Though ordinarily all documents relied upon by the prosecution should accompany the charge-sheet, nonetheless for some reasons, if all the documents are not filed along with the charge-sheet, that reason by itself would not invalidate or vitiate the charge-sheet. It is also well settled that the court takes cognizance of the offence and not the offender. Once from the material produced along with the charge-sheet, the court is satisfied about the commission of an offence and takes cognizance of the offence allegedly committed by the accused, it is immaterial



whether the further investigation in terms of Section 173(8) is pending or not. The pendency of the further investigation qua the other accused or for production of some documents not available at the time of filing of charge-sheet would neither vitiate the charge-sheet, nor would it entitle the accused to claim right to get default bail on the ground that the charge-sheet was an incomplete charge-sheet or that the charge-sheet was not filed in terms of Section 173(2) of Cr.P.C.”

11. In **Dinesh Dalmia Vrs. CBI (2007) 8 SCC 770**, it has been held by the Apex Court that even if all the documents had not been filed along with the chargesheet, by a reason thereof, such submission of chargesheet itself does not become vitiated in law with the conclusion that a court takes cognizance of an offence and not the offender as held earlier in **Anil Saran Vrs. State of Bihar and another (1995) 6 SCC 142** and **Popular Muthiah Vrs. State (2006) 7 SCC 296**. while dealing with the question regarding filing of the chargesheet, it has been held in the said case that the same is a final report within the meaning of Section 173(2) Cr.P.C. and filed so as to enable the court to apply its mind as to whether cognizance of the offence thereupon should be taken or otherwise and one of requirements for submission of a chargesheet is, whether, any offence appears to have been committed and if so, by whom and in the some cases, the accused having not been arrested, the investigation against him may not be complete and even if he is absconding but accused to have committed the offence, law does not require that filing of the chargesheet must await his arrest. It has also been concluded therein that ordinarily all documents



accompany the chargesheet but in some cases, certain documents not in the possession of the Investigating Agency are not filed therewith and even if, any such document is not filed or could not be submitted after closure of investigation, that by itself, is not sufficient to claim that the chargesheet stands vitiated thereby entitling default bail under Section 167(2) Cr.P.C. In **Ajay Singh** (supra), this Court, while considering a case of default bail, had observed that it may be alleged that there is absence of a prima facie case vis-a-vis recovery of contraband substance without a chemical examination report, recovery of which, is punishable under the NDPS Act but at the same time, concluded that the concerned court did not seriously examine the said aspect of the case upon receiving the preliminary chargesheet in anticipation that such a report to be formally obtained and filed later on but at last, directed release of the petitioners to go statutory bail with the opinion that the matter is pending before the larger Bench in **Manpreet Singh Talwar** (supra) and that part, allowed such release also for the fact that the chargesheet had been filed beyond the statutory period of 180 days. It is reiterated that a court should always be meticulous while dealing with a chargesheet received without chemical examination report and at times, it could lead to disastrous consequence, if ultimately, the substance is found not to be a contraband resulting thereby the detention of the accused as illegal as held and concluded in **Ajay Singh** (supra), wherein, the recovery and seizure was also Ganja. The situation becomes complicated where any powder-like substance is



alleged to be contraband and is recovered and therein, the chargesheet is filed not accompanied with any chemical examination report. In any case, it is always expected that a court shall have to demand chemical examination report upon receiving the chargesheet. It is also necessary that any such report shall have to be in place, if not along with the chargesheet but immediately thereafter, for considering framing of charge, where, according to the Court, non-production of the same cannot be dispensed with.

12. In the case at hand, a similar seizure of Ganja of commercial quantity has been made and even though, the IO and other officials do have the experience to identify a contraband substance like Ganja but to ascertain the exact nature of the substance and conclusively confirm that the same is a contraband item, it is essential that the chargesheet is accompanied with a chemical examination report. At times, chargesheets are filed and by that time, the chemical examination reports had not been received from the FSL. Of course, availability of any such report is not always possible to be received in time but definitely necessary at the time of charge being framed for a court to be prima facie satisfied that the seizure item is a banned substance. So far as the petitioners are concerned, the chargesheet reveals that they were travelling in the alleged vehicle when it was intercepted by the local police and thereafter, search was conducted leading to the seizure of contraband Ganja and ultimately, the chargesheet was filed but without chemical examination



report. In view of the clarification issued by the Apex Court in **Manpreet Singh Talwar** (supra) by order dated 12th May, 2023, it has to be held that the decision in **Ritu Chhabaria** cannot be followed for the present. In other words, it has to be held that the decision in **Ritu Chhabaria** (supra) has been put on hold for the time being till a decision in **Manpreet Singh Talwar** case has arrived. Undeniably, the chargesheet was filed within the stipulated period and therefore, it is not a case alike **Ajay Singh** (supra), wherein, default bail was also demanded and allowed for having received the preliminary chargesheet beyond the stipulated period. With the facts discussed hereinabove and as herein the chargesheet is filed in time, in view of the clarification of the Apex Court dated 12th May, 2023 in **Manpreet Singh Talwar** case still to be decided by the larger Bench, the Court is of the humble view that they are not entitled to default bail under Section 167(2) Cr.P.C. and Section 187(2) BNSS.

13. Accordingly, it is ordered.

14. In the result, the revision petition stands dismissed.

(R.K. Pattanaik)
Judge

Tudu

Signature Not Verified

Digitally Signed
Signed by: THAKURDAS TUDU
Designation: Sr. Stenographer
Reason: Authentication
Location: OHC, CTC
Date: 17-Dec-2025 21:05:35

