



A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMA NO.107 of 2025

(In the matter of application under Section 483(1)(b) of BNSS, 2023).

Harsha C

...

Petitioner

-versus-

State of Orissa

...

Opposite Party

For Petitioner : Mr. D.Mund, Advocate

For Opposite Party : Mr. C.Mohanty, Addl. PP

CORAM:

JUSTICE G. SATAPATHY

DATE OF HEARING & JUDGMENT:03.09.2025(ORAL)

G. Satapathy, J.

1. Against the imposition of condition to furnish "one surety, who must be a kin relative of the accused" by the learned Sessions Judge, the petitioner has invoked the jurisdiction of this Court U/S. 483(1)(a)/(b) of BNSS.

2. Heard, Mr. Dhananjaya Mund, learned counsel for the petitioner and Mr. C. Mohanty, learned Addl. PP in the matter and perused the record.



3. It appears that the learned Sessions Judge while granting bail to the accused has imposed a condition on the petitioner to furnish a surety, who must be his kin relative, but it appears that such condition is not only onerous, but also the same was an impediment for the petitioner for getting out of the jail. Right to personal liberty is the constitutional mandate, but detaining a person in custody is an exception and that must be in according to the procedure established by law. Regarding imposition of conditions in granting bail, law is also fairly well settled in ***Moti Ram & Others vs. State of Madhya Pradesh; (1978) 4 SCC 47***, wherein the Apex Court through the immortal words of Hon'ble Mr. Justice Krishna Iyer had held that "India is one and not a conglomeration of districts, untouchably apart" and therefore, seeking a condition which is not strictly in terms of the mandate of law would be highly unacceptable. No doubt, there is no provision regulating imposing any condition while granting bail, but the condition would be of such nature that it would only help in securing the attendance of the petitioner at the trial



and when the Court has already imposed a condition to furnish two sureties, there is no need to insist that out of the two sureties, one would be his kin relative and even if it is imposed, it would have been waived out when the petitioner could not furnish such surety even after getting bail. While interpreting the provision of law, the Court should always be inclined to give effect to the personal liberty of a person. The underlying principle in imposing conditions while granting bail is that the excessive bail is no bail. In the context, it is to be understood why there are provisions for bail which is in fact enacted to prevent detention of accused pending adjudication of the allegation leveled against the accused as pre-trial punishment since the accused is presumed to be innocent until proven guilty and, therefore, imposing onerous conditions sometimes amounts to denial of bail. The conditions imposed on the accused while granting bail is somewhat meant to ensure attendance of the accused at the trial, but imposing a condition which is not only excessive, but also impossible for the accused to comply is never the



intention of the legislature and while granting bail by passing an order, it is presumed that the Court has already intended to exercise its discretion of personal liberty in favour of the accused, but thereafter imposing an impossible condition to comply would only frustrate the intention of the Court to grant bail to the accused and it is against the personal liberty of the accused which is guaranteed under Article 21 of the Constitution of India. After granting bail, imposing excessive and onerous conditions, which are impossible for compliance by the accused for his release from custody is not the spirit of law and would be considered depriving the accused of his personal liberty without the sanction of law. What are considered excessive and onerous conditions would depend on the facts and circumstances of each case and the capacity of the accused, but once the accused is found unable to furnish surety or comply the conditions of bail, the Court has to come to the aid of the such accused by modifying/relaxing the conditions for bail. At this stage, this Court considers it relevant to reiterate the directions issued by the Apex Court in



POLICY STRATEGY FOR GRANT OF BAIL, INRE SMWP (Criminal) No. 4/2021; 2023 SCC OnLine SC 483 and the two relevant directions as issued therein are extracted hereunder:-

"9.(6) If the bail bonds are not furnished within one month from the date of grant bail, the concerned Court may suo moto take up the case and consider whether the conditions of bail require modification/relaxation.

9.(7) One of the reasons which delays the release of the accused/convict is the insistence upon local surety. It is suggested that in such cases, the courts may not impose the condition of local surety."

3.1. In ***Ramchandra Thangappan Aachari vrs. The State of Maharashtra; 2024 SCC Online SC 2629***, the Apex Court in Paragraph-6 of the order has held that it would be a **travesty of justice** if the petitioner is unable to secure **the benefit of bail order for his inability to furnish local surety**. This will infringe the rights guaranteed under Article 21 of the Constitution for the person, who continues to be detained despite a bail order in his favour.

4. In ***Moti Ram (supra)***, the Apex Court has further held in Paragraph-33 as under:-



"33. To add insult to injury, the magistrate has demanded sureties from his own district! (we assume the allegation in the petition). What is a Malayalee, Kannadiga, Tamil or Telugu to do if arrested for alleged misappropriation or theft or criminal trespass in Bastar, Port Blair Pahalgam or Chandni Chowk? He cannot have sureties owning properties in these distant places. He may not know any one there and might have come in a batch or to seek a job or in a morcha. Judicial disruption of Indian unity is surest achieved by such provincial allergies. What law prescribes sureties from outside or non-regional language applications? What law prescribes the geographical discrimination implicit in asking for sureties from the court district? This tendency takes many forms, sometimes, geographic, sometimes linguistic, sometimes legalistic. Article 14 protects all Indians qua Indians, within the territory of India. Article 350 sanctions representation to any authority, including a court, for redress of grievances in any language used in the Union of India. Equality before the law implies that even a vakalat or affirmation made in any State language according to the law in that State must be accepted everywhere in the territory of India save where a valid legislation to the contrary exists. Otherwise, an adivasi will be unfree in Free India, and likewise many other minorities. This divagation has become necessary to still the judicial beginnings, and to inhibit the process of making Indians aliens in their own homeland. Swaraj is made of united stuff."

4.1. In **Satender Kumar Antil vs. Central Bureau of Investigation & Anr; (2022) 10 SCC 51**, the Apex Court has held that "imposing a condition



which is impossible of compliance would be defeating the very object of release.”

5. In this case, due to the condition as imposed by the learned trial Court, the petitioner is unable to get out from the jail custody and he is in custody since 29.04.2025. Time and again, it is being held that bail is the rule, but jail is the exception and an accused should be presumed to be innocent until proven guilty at the trial and Court should not consider a person to be guilty of the crime, unless the same is established in terms of the proof beyond all reasonable doubts. In the aforesaid situation and circumstance and taking into account the precedents referred to above, this Court considers it proper to allow the CRLMA by waiving out the condition of furnishing a surety of kin relative of the petitioner, especially when the petitioner is unable to get out of the jail despite being allowed to go on bail.

6. In the result, the CRLMA stands allowed and the condition “out of the two sureties, one surety must be kin relative of the accused” stands waive out



and rest part of the order remains unaltered.
Accordingly, the CRLMA stands disposed of.

(G. Satapathy)
Judge

*Orissa High Court, Cuttack,
Dated the 3rd day of September, 2025/Sasmal*