

A.F.R.



IN THE HIGH COURT OF ORISSA AT CUTTACK
BLAPL Nos.5527 & 6993 of 2025

(In the matter of application under Section 483 of the BNSS).

Jati @ Susanta Rout ... **Petitioners**
(In BLAPL No. 5527 of 2025)
Jilapi @ Basanta Sahu
(In BLAPL No. 6993 of 2025)
-versus-

State of Odisha ... **Opposite Party**

For Petitioners : **Mr. S.N. Das, Advocate**
(In BLAPL No. 5527 of 2025)
Mr. S.K. Bhanjadeo, Advocate
(In BLAPL No. 6993 of 2025)

For Opposite Party : **Mr. M.K. Mohanty, Addl. PP**

CORAM:

JUSTICE G. SATAPATHY

DATE OF HEARING & DATE OF JUDGMENT:06.08.2025 (ORAL)

G. Satapathy, J.

1. Since these two bail applications arise out of one and same case record, the same are heard together and disposed of by this common order with the consent of the learned counsel for the parties.

2. These are two bail applications U/S.483 of BNSS by the petitioners for grant of bail in connection with Purushottampur PS Case No.14 of 2025 arising out of GR



Case No.14 of 2025 for commission of offences punishable U/Ss. 317(2)/309(6)/111/123 of BNS pending in the Court of learned JMFC, Purushottampur.

2.1 The allegations in brief are that on 04.01.2025 at about 04:45PM, while Kuntala Gouda and Sweety Gouda were going to Purushottampur from their village Chadhiapalli by an auto rickshaw, the driver of the said auto rickshaw took them away towards Rambha area, instead of Purushottampur and threw away them at the road side by spraying some poisonous substance on their nose and taking away some gold ornaments weighing 2 tola gold neckless and 80 Grams silver ornaments, when they become unconscious. The aforesaid two persons were rescued by Rambha Police and admitted to Chattrapur Hospital. On this incident, the son of Kuntala Gouda lodged an FIR on 05.01.2025 paving the way for registration of Purushottampur PS Case No. 14 of 2025 and in the course of investigation, the involvement of the present Petitioners were allegedly unearthed and they were taken into custody.



3. In the course of hearing, Mr. Sailaza Nandan Das, learned counsel for the Petitioner in BLAPL No. 5527 of 2025 prays to grant bail to the petitioner on the plea of their illegal detention in custody on the ground that the petitioners were forwarded to the Court after the statutory period of maximum 24 hours prescribed for detention in custody and thereby, their arrest being violative of Sections 57, 58 and 187 of BNSS, the further detention of the petitioners is illegal.

3.1. Mr. Sanjib Kumar Bhanjadeo, learned counsel for the Petitioner in BLAPL No. 6993 of 2025 also takes the same plea only in the course of argument, but he has not taken such plea in his bail application.

3.2. On the other hand, Mr. M.K. Mohanty, learned Additional Public Prosecutor, however, does not dispute about the detention of the Petitioners in custody w.e.f 5:00am on 16.01.2025 till they were produced before the Court concerned on 17.01.2025 at about 8:00am after arresting them at about 00:20am in the intervening night of 16/17.01.2025, but Mr. Mohanty clarifies that the Petitioners were only detained in Buguda PS for



investigation in another case w.e.f 05:00am on 16.01.2025 till 00:20am of 16/17.01.2025 and, therefore, there is hardly any violation of the statutory of provision of law for which the arrest of the Petitioners cannot be considered illegal. On the aforesaid submissions, Mr. Mohanty prays to reject the bail application of the Petitioners.

4. On a careful consideration of the rival submissions makes it apparently clear that the plea of illegal detention of the Petitioners as advanced stems from the provisions of Sec. 58 of BNSS(Sec. 57 of CrPC) which is titled as "person arrested not to be detained more than 24 hours" and it is accordingly, laid down in Sec. 58 of BNSS that no Police Official shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 187 of BNSS (U/S. 167 CrPC), exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court, whether having



jurisdiction or not. What is significant is that arrest has not been defined either in BNSS or in any statute, but how arrest is made has been provided in Sec. 43(1) of BNSS (Sec. 46 of CrPC) and it is stated therein that in making an arrest, the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action. It is, therefore, plain and simple that if the Officer arresting the person touches or confine the later, it can be said that the said person (the later) is arrested and such person can also be said to have been arrested, if he submits to the custody by word or action. However, "custody" and "arrest" are not synonymous and in every arrest, there must be custody, but not vice versa, since a person in custody may not be under arrest. Further, the custody means physical surrender of the person and even if a person is not arrested, he can surrender in the Court, but one thing is very clear that during custody in a criminal matter, the person is considered to be in duress. It is, however, very clear that if a person is either



arrested or confined in custody of a law enforcing agency, he is under duress. Protection of life and personal liberty of a person is the fundamental right of such person and Article 22 of the Constitution of India provides protection against arrest and detention in certain cases and, therefore, the provision of Sec. 58 of BNSS(Sec. 57 of CrPC) flows from Article 22(2) which makes it mandatory that every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate. In addition, Article 22(1) of the Constitution of India provides that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice. It is, therefore, very clear that if a person is detained in custody of Police on the charge of committing



any offence is automatically can be presumed of his arrest, unless he is set free and if such custody of said person by the Police Official continues, the Police Official keeping such person in custody shall be required to produce him before nearest Magistrate within a period of 24 hours excluding the time necessary for the journey.

5. In the present case, as per the affidavit filed by the IIC, Purushottampur PS, it appears that the Petitioners were taken into custody of Buguda PS w.e.f 5:00am on 16.01.2025, but they were produced in the Court on 17.01.2025 at about 08:00am by Purushottampur Police, even though they were taken into custody by Purushottampur Police on 17.01.2025 at about 00:20am, but the Petitioners having not released from custody w.e.f 5:00am on 16.01.2025, their detention in Police custody can be considered beyond 24 hours inasmuch as they were not merely under Police custody, but their physical movement was confined as well as restricted and thereby, they were in duress. For the purpose of criminal case, the Petitioners being not produced beyond 24 hours, their detention can be



considered illegal for violation of provision of Article 22(2) of the Constitution of India r/w Sec. 58 of BNSS and, therefore, the arrest of the Petitioners are violative of the Constitutional mandate. One of the important aspects as emerged in this case is that the copy of arrest memo of the Petitioner Jilapi @ Basanta Sahu produced in this case containing the signature of IIC does not contain the time of arrest as such place in the column in the printed form meant for time of arrest remains blank, whereas the time of the arrest in the printed arrest memo of the co-accused Jaga @ Jaganath Mohapatra, has been filled up in hand by writing 08:00am in pen. These documents go a long way to say about the illegal detention of the Petitioners in custody beyond 24 hours. Detention of a person in police custody in reference to a criminal case would definitely be construed as arrest of such person. In every arrest, there must be an element of custody, but not vice versa inasmuch as a person can be taken into custody without formal arrest, however, in both "arrest and custody", the personal liberty is curtailed since the movement of such person is restricted.



6. Assuming the plea of the police about arresting the petitioners by Purusottampur Police at 00.20am to be a fact, but the petitioners being detained by Buguda police since 5 AM of the previous day i.e. 16.01.2025 without any authorization by Judicial Magistrate is violative of the Constitutional provision of arrest and detention inasmuch as, law prescribes that no person can be detained in custody beyond 24 hours without the authorization of the Judicial Magistrate which is the mandate of 187 of BNSS (U/S. 167 CrPC) and, therefore, the police in this case could have taken permission of the concerned Magistrate to take the petitioners in remand beyond 24 hours. When a particular thing in law is to be done in a particular way, it is to be done in that way or not at all. In this case, what prevented the police not to take any authorization from the concerned Magistrate to take the petitioners in remand, if they are found allegedly involved in a criminal case. Personal liberty of a person is not only sacrosanct, but also his fundamental right and such personal liberty of a person cannot be curtailed except according to the procedure established by law.



This Court is unable to accept the plea of the Police for keeping the petitioners detained in custody beyond 24 hours without any authorization of the Magistrate, even the petitioners were received in custody from Buguda police at 00.20am by the Purusottampur Police since the petitioners were detained continuously w.e.f. 5am on 16.01.2025.

7. In the above context, this Court considers it profitable to refer to the decision in the case of ***Directorate of Enforcement Vrs. Subash Sharma; 2025 SCC On Line SC 240*** wherein in a somewhat similar situation the Apex Court at Paragraph-5, 6, & 8 has held as under:-

*"5. The submission of the learned counsel appearing for the appellant is that pursuant to the Look Out Circular (for short, 'the LOC') issued against the respondent, he was detained at IGI Airport from **11.00 hours, on 5th March, 2022**. But he was shown as arrested at **01.15 hours on 6th March, 2022** by the appellant Enforcement Directorate and was **produced before the Court of the learned Magistrate within 24 hours from 1.15 hours on 6th March, 2022**.*

6. This argument cannot be accepted. Admittedly, the LOC was issued at the



instance of the appellant-Directorate of Enforcement. By executing the LOC, the Bureau of Immigration detained the respondent at IGI Airport from 4th March 2022 on behalf of the Appellant. The finding of fact recorded in paragraph 10 is that undisputedly, **the physical custody of the respondent was taken over by the appellant from the Bureau of Immigration at 11.00 hours on 5th March, 2022. Thereafter, at 1.15 hours on 6th March 2022, an arrest memo was prepared by ED at Raipur. He was produced before the Court at 3 p.m. on 6th March, 2024.** The perusal of the arrest order(Annexure p-1) shows that the typed order was kept ready. **The date and time of arrest were kept blank which appear to have been filled in by hand.** Admittedly, the respondent was **not produced before the nearest learned Magistrate within 24 hours from 11.00 a.m. on 5th March, 2022.** Therefore, the arrest of the respondent is rendered completely illegal as a result of the violation of clause 2 of Article 22 of the Constitution of India. Thus, the continuation of the respondent in custody without producing him before the nearest Magistrate within the stipulated time of 24 hours is completely illegal and it infringes fundamental rights under clause 2 of Article 22 of the Constitution of India. Therefore, his arrest gets vitiated on completion of 24 hours in custody. Since there is a violation of Article 22(2) of the Constitution, even his fundamental right to liberty guaranteed under Article 21 has been violated.

8. Once a Court, while dealing with a bail application, finds that the fundamental rights of the accused under **Articles 21 and 22 of the Constitution of India have been**



violated while arresting the accused or after arresting him, it is the duty of the Court dealing with the bail application to release the accused on bail. The reason is that the arrest in such cases stands vitiated. It is the duty of every Court to uphold the fundamental rights guaranteed under Articles 21 and 22 of the Constitution."

8. On a careful conspectus of admitted facts of the time of detention and arrest of the petitioners in this case, which found to be violative of Article 22(2) of the Constitution of India and applying the law laid down by Apex Court in ***Subash Sharma(supra)***, this Court considers that since the arrest and detention of the petitioners being infringement of their fundamental right, their further detention in custody should not be enlarged and they be released on bail forthwith.

9. Hence, the bail applications of the Petitioners namely Jati @ Susanta Rout and Jilapi @ Basanta Sahu in BLAPL Nos. 5527 & 6993 of 2025) stand allowed and they are allowed to go on bail on furnishing bail bonds of Rs.50,000/- (Rupees Fifty Thousand) with one solvent surety each for the like amount to the satisfaction of the learned Court in seisin of the case on such terms and conditions as deem fit and proper by it.



10. Accordingly, the BLAPL Nos. 5527 & 6993 of 2025 stands disposed of.

11 Issue urgent certified copy of the order as per Rules.

(G. Satapathy)
Judge

*Orissa High Court, Cuttack,
Dated the 6th day of August, 2025/Priyajit*