



IN THE HIGH COURT OF ORISSA AT CUTTACK
BLAPL Nos.2227 & 2229 of 2026
CNR Nos. ODHC010154582026 &
ODHC010154592026

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

Sadre Alam ... ***Petitioners***
(In BLAPL No.2227 of 2026)
Jamir Miya @ Zamir Miya
(In BLAPL No. 2229 of 2026)

-versus-

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

For Petitioners : ***Mr. S.Manohar, Advocate***
(in both BLAPLs)

For Opposite Party : ***Mr. S.C.Pradhan, Addl. PP***

CORAM: JUSTICE G. SATAPATHY

DATE OF HEARING: 07.08.2026

DATE OF JUDGMENT:07.08.2026

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 bail applications U/S.483 of BNSS by the petitioners for grant of bail in connection with Mathili PS Case No. 257 of 2024 corresponding to Spl. GR Case No.



185 of 2024 pending in the file of learned Addl. Sessions Judge-cum-Special Judge, Malkangiri for commission of offences punishable U/Ss. 20(b)(ii)(C) of the NDPS Act, on the main allegation of transporting 107Kgs. 300Grams of Contraband Ganja in a Skoda car bearing Regd. No. CG-15-CV-3171.

3. Heard Mr. Ambrish Kumar along with Mr. Shyam Manohar, learned counsel for the petitioners in both the bail applications and Mr.S.C.Pradhan, learned Addl. PP in these two matters and perused the record.

4. After having considered the rival submissions upon perusal of record, there appears allegation against the petitioners for transporting 107Kgs. 300Grams of Contraband Ganja which is much above the limit of commercial quantity of 20Kgs., but the petitioners have taken pleas before this Court about non-compliance of Sec. 47/58 of BNSS read with Article 22(1) & 22(2) of the Constitution of India as grounds of grant for bail to the petitioners. In responding to the first ground of non-compliance of Sec. 47 of BNSS, this Court by way of



judgment dated 22.05.2026 passed in BLAPL No. 10846 of 2025 and other two bail applications have already held that in no circumstance the total non-compliance of Sec. 47 of BNSS read with Article 22(1) of the Constitution of India is permissible, but serving of grounds of arrest to the arrestee in writing may apply to the arrest prospectively on and from the date of pronouncement of the judgment in ***Mihir Rajesh Shah Vrs. State of Maharashtra; (2026) 1 SCC 500*** which was delivered on 06.11.2026. The relevant observation in Para-68 of ***Mihir Rajesh Shah(supra)*** is extracted as under:-

"68. We are cognizant that there existed no consistent or binding requirement mandating written communication of the grounds of arrest for all the offences. Holding as above, in our view, would ensure implementation of the constitutional rights provided to an arrestee as engrafted under Article 22 of the Constitution of India in an effective manner. Such clarity on obligation would avoid uncertainty in the administration of criminal justice. The ends of fairness and legal discipline therefore demand that this procedure as affirmed above shall govern arrests "henceforth".



5. The above view has been reiterated in a very recent decision in ***State of Meghalaya Vrs. Sonam Raghuvanshi @ Bitti @ Bittu; SLP (Crl.) No.11944 of 2026 disposed of on 23.07.2026***, wherein the Apex Court in paragraph-9 has held as under:-

"9. Law is quite settled that serving of the grounds of arrest is mandatory. This has been introduced as a Judge made law vide a judgment of this Court in the case of **Mihir Rajesh Shah (supra)**. That is the precise reason why this Court was pleased to hold that though such a procedure is not contemplated, nonetheless, it is so required in order to give effect to Article 22(1) of the Constitution of India. For the said reason, the decision was made to apply prospectively. Admittedly, in the case on hand, the respondent was arrested on 09.06.2025 much before the date of pronouncement of **Mihir Rajesh Shah (supra)**."

6. Besides, in ***Sonam Raghuvanshi(supra)***, the Apex Court in Paragraphs-10, 11 & 12 has held as under:-

"10. Apart from the fact that the respondent was conspicuously absent and, thus, could not be traced after the occurrence, the law does not restrain the prosecuting agency from re-arresting a person. In other words, non-compliance of the service of grounds of arrest to an accused and consequent enlargement on bail, will not act as a fetter to re-arrest the said accused for the purpose of investigation."



11.xx xx xx There is a fundamental difference between nonservice of grounds of arrest and non-furnishing of adequate reasons thereunder. While the first category might vitiate the arrest, in the second category, one has to see the prejudice caused to the accused. Xx xx xx.

12.xx xx xx we would only clarify that when an accused person files a bail application, the stage might become irrelevant. However, when the accused person warranted a finding on merits on the earlier occasions, it is not open for him/her to go back and raise the plea on the issue pertaining to the grounds of arrest thereafter".

7. In coming to the next plea of the petitioners that they were produced beyond 24 hours, it appears that Mr.Manohar, learned counsel for the petitioners has highlighted the time stated in the FIR that at 9AM on 06.12.2024 the raiding party were doing day blocking duty and thereby, the detention of the petitioners has to be considered from 9AM in the morning, but not only in the said FIR, but also in other contemporaneous documents, it is clearly stated that the petitioners were detained at 2.15 PM on the same date and thereby, the detention of the petitioners can be considered from the time 2.15 PM for the purpose of computing the time of production of accused in



terms of Sec. 58 of BNSS, even though the petitioners were formally shown to have been arrested on 06.12.2024 at about 9.45PM. One of the important aspects involved in this case is that at the time of remanding the accused persons (petitioners), the learned Presiding Officer of the Court in seisin over the matter has in fact asked the petitioners about the ill-treatment, but the petitioners have not stated anything before the Presiding Officer, rather they complaints of no ill-treatment. This fact suggests that had there been any violation of Sec. 58 of BNSS for producing the petitioners beyond 24 hours, they would have definitely stated such fact before the Magistrate. It is also not understood as to how the counsel who was appearing for the petitioners could not took such plea till it was taken for the first time at the time of filing of bail application before the Court in seisin over the matter after more than a year. Further, the petitioners have not produced the first date of remand order and the subsequent order sheets of the trial Court, when the petitioners were produced before the Court till the plea was taken and, therefore, the plea as advanced



for the petitioners has to be considered from the time of 2.15PM on 06.12.2024, but no document has been produced to show that the petitioners were produced after 2PM on the next date i.e. 07.12.2024. No doubt, the petitioners have relied upon their medical examination reports which were prepared on 07.12.2024 at about 11.10AM., which is within 24 hours.

8. In Coming to the next contention of the petitioners that the search & seizure was made in gross violation of provision of Sec. 105 of BNSS, but fact remains that NDPS Act is a self-contained Act having inbuilt provision for search and seizure which is evident from Sec. 42 & 43 which does not contemplate about recording of search and seizure in audio visual mode, but even if accepting for a moment that the search and seizure was not conducted through audio visual method as prescribed U/S. 105 of BNSS, it would not vitiate the arrest or remand of the petitioners. Even accepting the plea, it appears that the petitioners have not shown any prejudice for not conducting the search and seizure through audio video mode so as to



make them entitle to bail on that score. On the other hand, on a careful scrutiny of materials placed on record, this Court does not find the petitioners to have satisfied the conditions of Sec. 37 of NDPS Act which is *sine qua non* for grant of bail to an accused for commission of offence under NDPS Act. Further, the bail applications of the petitioners were rejected by this Court on merits in BLAPL Nos. 1586 of 2025 and 1596 of 2025, but they have not taken the plea of non-compliance of Sec.47/58 of BNSS and right now they are raising such plea for the first time before this Court which is against the principle that has been laid down in paragraph-12 of ***Sonam Raghuvanshi(supra)*** and, thereby, no prejudice has been demonstrated by the petitioners in terms of the law laid down by Apex Court in ***Sonam Raghuvanshi(supra)*** for non-compliance of the aforesaid provisions. Besides, the petitioners were arrested much before the date of delivery of judgment in ***Mihir Rajesh Shah(supra)*** and they, thereby are not entitled to the relief as claimed for non-furnishing of grounds of arrest to the petitioners in writing.



9. In view of the discussions made hereinabove coupled with the fact of petitioners having not been able to satisfy the conditions of Sec.37 of NDPS Act, which is sine qua non for grant of bail for commission of offence under NDPS Act involving commercial quantity, this Court is not inclined to grant bail to any of the petitioners. Hence, these two bail applications of the petitioners namely Sadre Alam (BLAPL No.2227 of 2026) and Jamir Miya @ Zamir Miya (BLAPL No.2229 of 2026) stand rejected.

10. Accordingly, both the BLAPLs stand disposed of. Issue urgent certified copy of the order as per Rules. A soft copy of this order be immediately communicated to the concerned Court.

(G. Satapathy)
Judge

*Orissa High Court, Cuttack,
Dated the 07th day of August, 2026/Kishore*

Signature Not Verified

Digitally Signed
Signed by: KISHORE KUMAR SAHOO
Reason: Authentication
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Date: 07-Aug-2026 16:40:01

