

IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLMC No.877 of 2022

Kanhu Charan Behera

....

Petitioner

Mr. Satya Ranjan Mulia, Advocate

-versus-

State of Odisha

....

Opp. Party

Mr. S.N. Mishra, Additional Government Advocate

CORAM:

SHRI JUSTICE B. P. ROUTRAY

ORDER

7.4.2022

Order No.

01. 1. Heard Mr. S.R. Mulia, learned counsel for the Petitioner and Mr. S.N. Mishra, learned Additional Government Advocate for Opposite Party – State.
2. The order dated 3rd November, 2016 of the learned J.M.F.C., Bhubaneswar in I.C.C. No.960 of 2015 issuing NBW of arrest against the Petitioner is challenged in the present application.
3. The offence alleged is under Section 138 of N.I. Act and the Petitioner was granted benefit of Section 205 Cr.P.C. by order dated 10th November, 2015 of the learned Magistrate subject to conditions. Since on the date fixed for recording of accused statement the Petitioner did not appear personally despite direction of the court, NBW of arrest was issued.
4. It is contended by Mr. Mulia that for failure on the part of the Petitioner to appear when he was granted the benefit of 205 Cr.P.C.

issuance of NBW of arrest is not the right procedure but he should have been issued with summons at the first instance.

5. The order dated 10th November, 2015 granting benefit of 205 Cr.P.C. was subject to conditions and one of such conditions is to the effect that the Petitioner will appear personally in the court as and when directed by the Court. Since the Petitioner did not appear despite directions of the court for the purpose of recording accused statement, no infirmity is noticed in the order of learned Magistrate issuing NBW of arrest against the Petitioner because the Magistrate is not optionless to procure attendance of the accused for violation of the conditions. As such I do not find any merit in the present application to interfere with the impugned order and the CRLMC is dismissed.

6. However, as prayed by the Petitioner he is at liberty to surrender and seek for bail. In the event the Petitioner surrenders within four weeks from today and prays for his release on bail, his prayer for bail shall be considered in accordance with law on the same day.

7. An urgent certified copy of this order be issued as per rules.

(B.P. Routray)
Judge