

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1170 of 2022

Sk. Belaluddin

Petitioner

Mr. A.R. Panda, Advocate

-Versus-

State of Odisha

....

Opposite Party

Mr. S. S. Mohapatra, ASC

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

02.11.2022

Order
No.

03.

1. Heard learned counsel for the petitioner and learned counsel for the State.
2. Instant petition under Section 482 Cr.P.C. is filed by the petitioner for quashing of the order of cognizance dated 20th April, 2022 passed in Special Case No.264 of 2021 by the learned Sessions Judge-cum-Special Judge, Balasore for having declined his release on default bail in terms of Section 167(2) Cr.P.C. on the grounds stated therein.
3. A copy of the impugned order is at Annexure-1 and the same is perused.
4. In fact, the petitioner applied for bail under Section 167(2) Cr.P.C in connection with Jaleswar P.S. Case No.320 dated 1st October, 2021. However, the same was rejected by the impugned order under Annexure-1.
5. Mr. Panda, learned counsel for the petitioner submits that since there was no CE report submitted along with chargesheet, the

petitioner was entitled to default bail in terms of Section 167(2) Cr.P.C., inasmuch as, investigation was closed without such a report.

6. Mr. Mohapatra, learned ASC for the State on the other hand submits that the investigation stands closed and there has been a chargesheet under Sections 21(c) and 29 of the NDPS Act and therefore, Section 167(2) Cr.P.C. would not apply.

7. In response to the above, Mr. Panda submits that in a similar case, this Court in CRLMC No.2033 of 2022 in the case of Sk. Eimat @ Bidhia Vrs. State of Odisha directed the accused to apply for regular bail with an observation as to the significance of the CE report which is required for consideration and so as to reach at a conclusion about the nature of the contraband substance so recovered and seized.

8. In the aforesaid case, this Court while considering plea for default bail held that since the investigation is over demand for release under Section 167(2) Cr.P.C. cannot be allowed. However, having held so, direction was given to the learned Special Court to consider the plea of the petitioner for regular bail with the observation as to the importance of the CE report and its absence should not be lost sight of as it plays a vital and dominant role to ascertain the nature of substance so seized and recovered from the accused.

9. Considering the above facts and submissions of learned counsel for the respective parties and taking note of the judgment in CRLMC Nos.2033 and 2428 of 2022 dated 12th October, 2022, this Court is of the view that the petitioner is not entitled to default bail under Section 167(2) Cr.P.C. but his prayer for regular bail should be considered by the learned Special Court.

10. Accordingly, it is ordered.

11. In the result, CRLMC stands dismissed, however, with a direction to the learned Sessions Judge-cum-Special Judge, Balasore to consider release of the petitioner on regular bail in connection with Special Case No.264 of 2021 in the light of observations made in CRLMC Nos.2033 and 2428 of 2022.

12. An urgent certified copy of this order be granted as per rules.

(R.K. Pattanaik)
Judge

TUDU

