

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1998 of 2022

Hadia @ Ramesh Das *Petitioner*
-versus-
State of Orissa *Opposite Party*

CORAM: JUSTICE S. PUJAHARI

Order
No.

ORDER
26.07.2022

01. 1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioner with a prayer to quash the order dated 2nd January, 2020 passed by the learned Sessions Judge, Balasore in Special Case No.219 of 2013 wherein N.B.W.(A) has been issued against him.
3. Heard the learned counsel for the Petitioner and the learned counsel for the State-Opposite Party.
4. It appears that the Petitioner, being indicted in a heinous and serious offence of rape against a child, was released on default bail on 11th March, 2014. Thereafter, the Petitioner appears to have not cooperated with the trial, for which, N.B.W.(A) was issued on 2nd January, 2020. Now, the case has been transferred to the Ad-hoc Additional Sessions Judge (FTSC), Balasore constituted for the purpose. The

Petitioner now challenged the said order on the ground that on the default of his lawyer, he should not be penalized.

5. Needless to say that a person indicted in a heinous and serious offence, though he is represented by a lawyer, but he is duty bound to regular communicate to his lawyer. Since the Petitioner has failed to do so, thereafter his lawyer appears to have not take any steps and, as such, N.B.W.(A) was issued against him. Petitioner contention is that his lawyer did not communicate to him. As such, he could not appear before the trial court and for the default of his lawyer, he should not penalized appears to be without any substance.

6. In view of the same, this Court is of the view that the default in appearance before the trial court is not bona fide. Hence, the N.B.W.(A) issued against the Petitioner needs no interference inasmuch as the trial court had no option but to issue N.B.W.(A) to procure his attendance to proceed with the trial. Furthermore, though N.B.W.(A) was issued on 2nd January, 2020, Petitioner has come to this Court near about 2½ years after.

7. In such premises, this Criminal Misc. Case filed is devoid of merit, as such, the same stands dismissed.

8. However, as it is stated that the Petitioner hereinafter would cooperate with the trial, it is open to the Petitioner to do so within four weeks hence and in that event, the court in seisin

over the matter shall consider and dispose of his bail petition in course of the day taking all the attending circumstances including the circumstance in which the Petitioner made default in appearance before the trial court.

(S. Pujahari)
Judge

DA

