

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC Nos. 2433 & 2437 of 2022

Ismail Khan

....

Petitioner

Mr. D.P.Dhal, Senior Advocate

-Versus-

State of Odisha

....

Opposite Party

Mr.S.S.Mohapatra, ASC

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

04.11.2022

Order No.

01.

1. Heard Mr. D.P. Dhal, learned Senior Advocate assisted by Mr. A.Ray, learned counsel appearing for the petitioner and Mr. Mohapatra, learned counsel for the State.

2. In CRLMC No. 2433 of 2022, the petitioner has assailed the impugned order dated 29th July, 2022 whereby an application under Section 167(2) Cr.P.C. filed by him for release on default bail for rejected by the learned Special Judge, Balasore in Special Case No. 27 of 2022.

3. In CRLMC No. 2437 of 2022, the petitioner has questioned the correctness and judicial propriety of the impugned order dated 27th July, 2022 whereby the learned Special Judge, Balasore has taken cognizance of offences under Section 21(C) and 29 of the NDPS Act besides IPC offences. In both the above cases, the challenge is

principally on the ground of absence of C.E. report submitted along with the chargesheets.

4. In fact, Mr. Dhal, learned Senior Advocate submits that since chargesheets are not submitted along with C.E. reports, they are no chargesheets in the eye of law and therefore, the petitioner was entitled to default bail in terms of Section 167(2) Cr.P.C. after expiry of the stipulated period of 180 days within which a chargesheet is required to be submitted. While contending so, instead of pressing the matters on merit, Mr.Dhal, learned Senior Advocate cites a judgment of this Court dated 12th October, 2022 in CRLMC Nos. 2033 of 2022 and 2428 of 2022(**Sk. Eimat @ Bidhia Vrs. State of Odisha and Sk.Mammat @ Sk.Mohammad Hosen @ Husen Vrs. State of Odisha**) wherein it has been held that since the investigation stood completed and there has been no extension to file chargesheets, the petitioners therein are not entitled to default bail but their plea for release may be considered in view of the fact that the chargesheets though preliminary but final was not accompanied with C.E. reports.

5. Mr. Mohapatra, learned counsel for the State submits that in view of the aforesaid judgment of the Court in CRLMC Nos. 2033 of 2022 and 2428 of 2022, necessary orders may be passed while disposing of both the petitions.

6. In the decision (supra), this Court denied the relief of default bail under Section 167(2) Cr.P.C. on the ground that there is closure of investigation even though a preliminary chargesheet was filed, however, made an observation to the effect that in absence of C.E. report, it was quite not possible for the Special Court to take cognizance of the offences under the NDPS Act. It has been observed therein that the importance of CE report cannot be lost sight of

because it plays a very important role and deciding factor in reaching at a conclusion as to the nature of the contraband substance so recovered and seized from an accused.

7. In view of the above facts, CRLMC stands disposed of with a liberty granted to the petitioner to apply for regular bail before the learned Special court in respective cases and in the event such applications are filed, the same shall be considered in the light of the decisions in CRLMC Nos. 2033 of 2022 and 2428 of 2022.

8. Urgent certified copy of this order be issued as per rules.

