

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 2563 of 2022

Laxmidhar Nayak and Others ..... Petitioners  
Mr. Devashis Panda, Advocate

-Versus-

Sakhi Nayak, ..... Opposite Party  
None

CORAM:  
MR. JUSTICE R.K. PATTANAİK

ORDER  
19.12.2022

Order No.

01. 1. Heard learned counsel for the petitioners.
2. Instant petition under Section 482 Cr.P.C. is filed by the petitioners assailing the impugned order dated 6<sup>th</sup> August, 2022 passed by the learned J.M.F.C.(O), Bhubaneswar in 1.C.C. Case No.5414 of 2021 whereby an application under Section 205 Cr.P.C. filed by them was rejected by the learned court below.
3. A copy of the complaint as at Annexure-2 is perused by this Court.
4. In fact, the petitioners approached the learned court below and filed an application under Section 205 Cr.P.C. for dispensing with their personal attendance and to allow them to appear through their counsel but the same was not entertained by the learned court below and considering the offences to be serious

issued non-bailable warrant of arrests fixing to 26<sup>th</sup> August, 2022 for their production.

5. Mr. Panda, learned counsel for the petitioners submits that learned court below fell into serious error in issuing NBWAs against the petitioners which is against the position of law and while contending so, he cites a decision of the Apex Court in **Inder Mohan Goswami and Others Vrs. State of Uttaranchal and Others** reported in **AIR 2008 SC 251**. It is contended that when the petitioners themselves approached the learned court below and sought for dispensing with their presence, the court should not have issued NBWAs against them, which however, should have issued B.Ws. at the first instance.

6. Considering the submissions of Mr. Panda, learned counsel for the petitioner and the circumstances leading to the filing of complaint, the Court is of the view that the petitioners against whom NBWAs had been issued, which are pending execution before the court below should be directed to surrender before the court below and released on bail subject to conditions which would serve the purpose.

7. In fact, the Apex Court in **Inder Mohan Goswami** (supra) held and observed that personal liberty and the interest of the State civilized countries have recognized that liberty is the most precious of all the human rights. The American Declaration of Independence 1776, French Declaration of the Rights of Men and the Citizen 1789, Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights 1966 all speak with one voice- liberty is the natural and inalienable right of every human being. Similarly, Article 21 of Constitution proclaims that no one shall be deprived of his liberty except in accordance with the procedure prescribed by law. It has further held therein that issuance of non-bailable warrants involves interference with personal liberty; arrest and imprisonment means deprivation of the most precious right of

an individual and therefore, the courts have to be extremely careful before issuing non-bailable warrants; just as liberty is precious for an individual so is the interest of the society in maintaining law and order; both are extremely important for the survival of a civilized society; sometimes in the larger interest of the public and the State, it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the non-bailable warrants should be issued; non-bailable warrants should be issued to bring a person to court when summons of bailable warrants would be unlikely to have the desired result in situations like when it is reasonable to believe that the person will not voluntarily appear in court; or the police authorities are unable to find the person to serve him with a summon; or it is considered that the person could harm someone if not placed into custody immediately.

8. So being aware of the decision cited supra, the CRLMC stands disposed of however with a direction to the petitioner to surrender before the learned J.M.F.C.(O), Bhubaneswar on or before 15<sup>th</sup> January, 2023 in connection with ICC No.5414 of 2021 and in the event he surrenders, the court below shall release him on bail on such terms and conditions as would be deemed just and proper in the facts and circumstances of the case.

9. Issue urgent certified copy of this order as per rules.

**(R.K. Pattanaik)**  
Judge