

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3475 of 2022

Susil Tarei and Another

....

Petitioners

Mr. Sambit Biswal, Advocate

-Versus-

State of Odisha

....

Opposite Party

Mr. S.S. Mohapatra, Advocate, OP No.1

None for OP No.2

CORAM:

MR. JUSTICE R.K. PATTANAIK

ORDER

16.12.2022

Order No.

02.

1. Heard learned counsel for the petitioners and learned counsel for the State.

2. Instant petition under Section 482 Cr.P.C. is filed by the petitioners assailing the impugned orders dated 26th October, 2022 and 2nd November, 2022 passed by the learned Additional Sessions Judge-cum-Special Judge, Kujang in connection with Special G.R. Case No.94 of 2022 whereby an application for default bail in terms of Section 167(2) Cr.P.C. was rejected.

3. Copy of the P.R. is at Annexure-1 and the same is perused which indicates that the petitioners were found in the possession of the contraband Brown sugar of less than commercial quantity. Learned counsel for the petitioners submits that petitioners ought to have been released on bail under Section 167(2) Cr.P.C. since because the period of 60 days expired on 23rd October, 2022 and thereafter the final PR was received by the learned court below which is shown to have been placed before the learned court below on 26th October, 2022. It is further submitted that after expiry of 60 days, the petitioners ought to have been informed of their rights for default bail under Section 167(2) Cr.P.C. which was, however, applied for by an application on 2nd November, 2022.

4. Learned counsel for the petitioners submits that learned court below should have granted default bail under Section 167(2) Cr.P.C. which was rejected under the impugned order dated 2nd November, 2022. While claiming so, learned counsel for the petitioners cites a decision of this Court in the case of **Laxmidhar Behera Vrs. State of Odisha** reported in (2021) 81 OCR-474 to contend that the final P.R. ought to have been submitted and placed before the court below on 60th days itself and since was not ensured, the petitioners were eligible for default bail. In the decision cited (supra), the Court held that it is the responsibility of the court to ensure that the provision of Section 167(2) Cr.P.C. is promptly complied with. It is further submitted that the petitioners have not been informed about their rights in order to enable them to apply for default bail under Section 161(2) Cr.P.C. Considering the fact that after expiry of 60 days, the final P.R. said to have been placed and keeping in view the decision in **Laxmidhar Behera** (supra), the Court is of the view that the petitioners should be allowed to go on default bail in terms of Section 167(2) Cr.P.C.

5. Accordingly, it is ordered.

6. Consequently, the CRLMC stands allowed.

7. In the result, learned Additional Sessions Judge-cum-Special Judge, Kujang is directed to release the petitioners on default bail under Section 167(2) Cr.P.C. in connection with Spl. G.R. Case No.94 of 2022 arising out of Jagatsinghpur P.S. Case No.37 of 2022-23 forthwith subject to conditions as would be found just and proper in the facts and circumstances of the case.

8. Issue urgent certified copy of this order be issued as per the rules.

(R.K. Pattanaik)
Judge