

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 3481 of 2022

Afsana Bibi

....
Mr. Amulya Ratna Panda, Advocate

Petitioner

-Versus-

State of Orissa

....
Mr. S.S. Mohapatra, ASC

Opposite Party

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
24.11.2022

Order No.

01.

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 dated 11th October, 2022 passed in T.R. Case No.56 of 2021 by the learned Sessions Judge-cum-Special Judge, Puri and 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 Chandanpur P.S. Case No.269 dated 7th November, 2020, however, the same was rejected by the impugned order under Annexure-2.
5. Mr. Panda, learned counsel for the petitioner submits that since there is 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 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 of 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** allowed the accused to apply for a regular bail with an observation as to significance of the CE report for consideration so as to reach at a conclusion vis-a-vis 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 default bail under Section 167(2) Cr.P.C. cannot be allowed, however, having held so direction was issued to the learned Special Court to consider the plea of the petitioner for regular bail with an observation as to the importance of the CE report and its absence not be lost sight of as it plays a vital and dominant factor to find out and ascertain the nature of substance so seized from the accused.

9. Considering the above facts and submissions of the learned counsel for the respective parties and taking note of the order of this Court 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, Puri to consider release of the petitioner on regular bail in the light of

observations and directions issued in CRLMC Nos.2033 and 2428 of 2022.

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

(R.K. Pattanaik)
Judge

U.K.Sahoo

