

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 3506 of 2022

Kuna @ Ashok Mallick

....
Petitioner
Mr. Priya Ranjan Singh, Advocate

-Versus-

State of Odisha

....
Opposite Party
Mr. S.S.Mohapatra, ASC

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 26th October, 2022 passed in C.T. Case No.181 of 2021 by the learned Additional Sessions Judge-cum-Special Judge, Jagatsinghpur 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 Jagatsinghpur P.S. Case No.555 dated 25th October, 2021, however, the same was rejected by the impugned order under Annexure-1.

5. Mr. Singh, learned Advocate for the petitioner submits that since there was 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, the investigation closed without such a report.

6. Mr. Mohapatra, learned ASC for the State on the other hand submits that the investigation stands closed as 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 to the above, Mr. Singh, learned Advocate 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 regular bail with an observation as to the significance of the CE report for consideration so as to reach at a conclusion as to the nature of the contraband substance 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 permitted, however, having held so direction was issued to the learned Special Court to consider the prayer of the petitioner for regular bail with observations as to the importance of the CE report and its absence not to be lost sight of as it plays a vital and dominant role and a decisive factor to find out and ascertain the nature of substance so seized from the accused.

9. Considering the above facts and submissions of 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 Additional Sessions Judge-cum-Special Judge, Jagatsinghpur to consider release of the petitioner on regular bail in connection with C.T. Case No.181 of 2021 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

