IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No. 13664 of 2025

Pramod Dora …. ***Petitioner***

Mr. A. Mohanty, Advocate

-versus-

State of Orissa …. ***Opposite Party***

Mr. S.K. Lenka, ASC

CORAM: JUSTICE V. NARASINGH

ORDER

08.12.2025

Order No.

01. 1. Heard learned counsel for the Petitioner and learned counsel for the State.

2. The Petitioner is seeking pre-arrest bail in connection with T.R. Case No.85 of 2021 pending in the Court of Learned Additional Sessions Judge-CUM-Special Judge, Jeypore, arising out of Jeypore Town P.S. Case No.226 of 2021 for commission of offences punishable U/s. 20(b)(ii)C/25/29 of the NDPS Act.

3. It is submitted by the learned counsel for the Petitioner that the basis of implication is on account of the statement of co-accused R. Hemant Kumar. It is submitted that said R. Hemant Kumar along with two other accused persons, faced trial, who were acquitted by the judgment dated 10.12.2024 passed by the

learned Addl. Sessions Judge-Cum- Special Judge, Jeypore in T.R. Case No.85 of 2021 and the acquittal was inter alia, on the ground of non-compliance of Sections 52-A[1] as well as 55[2] of NDPS Act. In this context reference is made to paragraph-14 of the said judgment. Thereafter reference is made to Paragraph-16 of the said judgment that *"Even though the prosecution is successful in establishing the sample are ganja, but has failed to establish that the same are recovered from the accused persons and other aspects*

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[1] **52-A. Disposal of seized narcotic drugs and psychotropic substances.—**(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.

(2) Where any narcotic drugs, psychotropic substances, controlled substances or conveyances has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under Section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs, psychotropic substances, controlled substances or conveyances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs, psychotropic substances, controlled substances or conveyances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs, psychotropic substances, controlled substances or conveyances in any proceedings under this Act and make an application, to any Magistrate for the purpose of—

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such Magistrate, photographs of such drugs, substances or conveyances and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872)11 or the Code of Criminal Procedure, 1973 (2 of 1974)10, every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs, psychotropic substances, controlled substances or conveyances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.

[2] **55. Police to take charge of articles seized and delivered.—**An officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station.

as required under the Act, 1985, by cogent, credible and corroborative evidence. In such peculiar facts and circumstances, when the case of prosecution suffers from cascading legal disaster having been all the doubtful circumstances, not satisfactorily explained from the side of prosecution by cogent and unimpeachable evidence, which is also bereft of independent corroboration and tainted with inherent self-contradictions, discrepancies and inconsistencies, no presumption contemplated u/s54 of NDPS Act can be pressed into service so as to insist the defence to discharge their reverse burden that the seized articles were not recovered from their possession"

Hence, referring to the same, it is submitted by the learned counsel that the present Petitioner may be protected by pre-arrest bail.

4. Learned counsel for the State opposes the prayer and submits that the evidence adduced in respect of the co-accused cannot enure to the benefit of the Petitioner. It is also further submitted that some of the infractions as noted therein do not come into the play so far as the present accused is concerned.

While there is no dispute regarding the proposition of law as stated, the special features enshrined under Section 37(1)(b)(ii) of the NDPS Act[3]

[3] **37. Offences to be cognizable and non-bailable.—** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)3,—
(a) xxx xxx

and nature of seizures made thereunder cannot be lost sight of.

5. Taking into account that the prosecution has not been able to prove conscious and exclusive possession from the co-accused, who have faced trial, this Court finds force in the submission of the learned counsel that the present petitioner, who was cited as an accused on the basis of the co-accused statement, may be protected by pre-arrest bail.

6. Considering the acquittal of the co-accused and grounds thereof and the manner of implication of the Petitioner, this Court is persuaded to hold that there is no prima facie case in terms of the Section 37(1)(b)(ii) of the NDPS Act[3] is made out and taking into account the submission of the learned counsel for the Petitioner that he does not have any criminal proclivity, this Court is of the considered opinion that the second limb of the 37(1)(b)(ii) of NDPS Act[3] is also satisfied.

7. Accordingly, it is directed that on surrendering within three weeks hence and moving for bail, the Petitioner shall be released on bail by the learned Court in seisin on such terms as deemed just and proper subject to verification of criminal antecedent.

(b) no person accused of an offence punishable for 2[offences under Section 19 or Section 24 or Section 27-A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—
(i)xxx xxx
(ii) where the Public Prosecutor oppose the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

8. If it comes to fore that the Petitioner has any criminal antecedent, this order shall not be given effect to.

9. It is needless to state that the Petitioner shall cooperate with the ongoing investigation.

10. Accordingly, the ABLAPL stands disposed of.

(V. NARASINGH)
Judge

Soumya

Signature Not Verified
Digitally Signed
Signed by: SOUMYA RANJAN SAMAL
Designation: Jr. Stenographer
Reason: Authentication
Location: High Court of Orissa
Date: 10-Dec-2025 11:14:55