IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 4643 of 2026
CNR No. ODHC010343272026

Pramod Ku. Mallick @ Kalia .... ***Petitioner***

Mr. D. Panda, Advocate

-versus-

State of Odisha .... ***Opposite Party***

Mr. C.R. Swain, AGA

BLAPL No. 4959 of 2026
CNR No. ODHC010369752026

Pradeep Kumar Kundu @ Pradeep Kundu .... ***Petitioner***

Mr. B. Das, Advocate

-versus-

State of Odisha .... ***Opposite Party***

Mr. C.R. Swain, AGA

BLAPL No. 5440 of 2026
CNR No. ODHC01036367 2026

Sekh Gulsar Uddin @ Sk. Gulsar Uddin .... ***Petitioner***

Mr. B. Das, Advocate

-versus-

State of Odisha .... ***Opposite Party***

Mr. C.R. Swain, AGA

CORAM: JUSTICE V. NARASINGH

ORDER
10.11.2026

Order No.

09. 1. Surrender certificate filed by the learned counsel for the Petitioner in BLAPL No.4959 of 2026 is taken on record.

2. Since both the BLAPLs relate to the same P.S. (Jagatsinghpur P.S case No.785 of 2025), on the consent of the parties, they are taken up together and disposed of by this common order.

3. Heard learned counsel for the Petitioners and learned counsel for the State.

4. The Petitioners are accused in connection with C.T. Case No.315 of 2025, pending on the file of learned Sessions Judge-cum-Special Judge, Jagatsinghpur, arising out of **Jagatsinghpur PS Case No.785 of 2025**, for commission of alleged offences under Sections 111(2)(b) of BNS read with Section 21(C)/29(1) of NDPS Act, allegedly being involved in the transportation of contraband (Brown Sugar) to the tune of 323gms.

5. Learned counsel, on instruction, submits that except the present BLAPLs, no other bail application of the Petitioners relating to the aforementioned P.S. case is pending in any other Court.

6. Being aggrieved by the rejection of their application for bail U/s.483 of BNSS by the learned Special Judge, Jagatsinghpur by orders dated 08.04.2026 & 23.04.2026 in the aforementioned cases respectively, the present BLAPLs have been filed.

7. It is stated by the learned counsel, Mr. Panda that Petitioner in BLAPL No.4643 of 2026 was remanded in this case on 25.03.2026.

Petitioner in BLAPL No.4959 of 2026 was arrested at the spot and is in custody since 29.09.2025. Petitioner in BLAPL No.5440 of 2026 is in custody since 28.01.2026.

8. It is stated by the learned counsel for the Petitioners that in the meanwhile 9 witnesses have been examined and referring to the evidence of the official witnesses i.e. P.Ws.1 & 7 who have been declared hostile, learned counsel for the Petitioners submits that further incarceration of Petitioners is unwarranted.

9. It is apt to note that the learned Court in seisin while dealing with the bail application of the Petitioner in BLAPL No.4959 of 2026 (Pradeep Kumar Kundu @ Pradeep Kundu) has noted that the said Petitioner is a HIV patient.

10. So far as criminal antecedents are concerned, Petitioner in BLAPL No.4959 of 2026 is stated to have

no criminal antecedent and Petitioner in BLAPL Nos.4643 & 5440 of 2026 have the following criminal antecedents:-

> "**Petitioner in BLAPL No.4643 of 2026**
> i) Jagatsinghpur P.S. Case No.310 of 2018 U/s 52(a) of Odisha Excise Act
> ii) Jagatsinghpur P.S. Case No.67 of 2019 U/s 52(a) of Odisha Excise Act
> iii) C.T Case No.93 of 2021 U/s 21(b) & 29(1) NDPS Act, 1985
> iv) C.T Case No.160 of 2021 U/s 21(b) & 29(1) NDPS Act, 1985
> v) C.T Case No.162 of 2023 U/s 21(b) & 29(1) NDPS Act, 1985
> vi) Nuagaon P.S. Case No.65 of 2026 U/s 111(2)(B) BNS, 2023 r/w.21(b) & 29(1) of NDPS Act, 1985.
>
> **Petitioner in BLAPL No.5440 of 2026**
> i) Madhupatana P.S. case No. 123 of 2021 U/s.21 (C) NDPS Act
> ii) Jagatsinghpur P.S. case No. 862 dtd. 27.10.2025, U/s-111(2)(b) BNS 2023 R/w U/s- 21(b), 29 of NDPS Act
> iii) Jagatsinghpur P.S. case No. 686 of 2025, U/s-111 BNS 2023, R/w U/S- 21(b), 29(1) of NDPS Act."

11. Learned counsel for the State opposes the prayer for bail in view of the bar contained in Section 37(1)(b)(ii) of NDPS Act.

12. So far as the consideration of bail applications is concerned, it is no longer res integra that the twin conditions as stated in the Section 37(1)(b)(ii) of NDPS Act shall operate, even when the trial has commenced and it is now settled beyond argument

that both the stipulations in the said Section have to be satisfied for grant of bail.

13. It is submitted by the learned counsel for the Petitioner, Mr. Panda that since the accusation is on account of the co-accused statement, the bar is not attracted and in this context he relies on the judgment of the dictum of the Apex Court in the case of **Tofan Singh Vs. State of Tamil Nadu**, reported in **(2021) 4 SCC 1** and the **State of Haryana Vrs. Samarth Kumar**, reported in **2022 SCC Online SC 2087**.

14. In dealing with the implication under Section 37(1)(b)(ii) of NDPS Act, the Apex Court in the recent judgment in the case of **State of Punjab v. Sukhwinder Singh alias Gora**, **(2026) 7 SCC 513**, has set at rest the interplay between the Article 21 as well as the rigors of Section 37(1)(b)(ii) of NDPS Act. This Court respectfully quotes paragraphs-10 & 11 of the said judgment, for convenience of reference:-

> "10. The impugned order, on its own showing, does not record the satisfaction mandated under Section 37(1)(*b*)(*ii*) of the NDPS Act. Far from recording such satisfaction, the High Court has gone on to observe that "the rigours of Section 37 of the NDPS Act can be diluted bearing in mind the right to a speedy trial". Such an approach is plainly contrary to the settled law laid down by this Court and deserves to be set aside on this ground alone.

> 11. The right to speedy trial, rooted in Article 21 of the Constitution, is undoubtedly a precious constitutional right. That said, in matters governed by a special enactment such as the NDPS Act, particularly where the recovery is of commercial quantity, the said right under Article 21 must be exercised within the framework of Section 37 and cannot be pressed into service solely on the ground of delay to override it. The constitutional right under Article 21 and the special provision of law under Section 37 of the NDPS Act are to be read harmoniously and not placed in opposition to each other. The High Court, by failing to record its satisfaction on the twin conditions under Section 37, has in this Court's view, committed an error."

15. It is stated by the learned counsel for the Petitioners that the said judgment is not applicable to the facts of the present case.

16. On considering the rival submissions, taking into account the evidence on record, this Court is not inclined to entertain the bail applications of the Petitioners in BLAPL Nos.4643 & 5440 of 2026 (Pramod Ku. Mallick @ Kalia & Sekh Gulsar Uddin @ Sk Gulsar Uddin) respectively, since this Court is not persuaded to hold that on being released they shall not commit any offence, keeping in view their criminal proclivity.

17. Since learned Trial Court is in seisin of the matter, this Court does not want to go into the details of the evidence on record, but for the purpose of

adjudication of the BLAPLs, the materials on record as well as evidence on record establish a prima facie case qua the Petitioners in BLAPL Nos.4643 & 5440 of 2026 are concerned.

18. So far as Petitioner in BLAPL No.4959 of 2026 is concerned, taking into account that he is a HIV patient, keeping in view the welfare of the other inmates, this Court directs the said Petitioner in BLAPL No.4959 of 2026 (Pradeep Kumar Kundu @ Pradeep Kundu) to be released on bail on such terms to be fixed by the learned Court in seisin subject to verification of criminal antecedent of "any nature".

If it comes to the fore that Petitioner in BLAPL No.4959 of 2026 has any such criminal antecedent, this order shall not be given effect to in respect of the said Petitioner.

19. Registry is requested to send a copy of this order via electronic mode to the Superintendent of the concerned Jail, in addition to the communication through Order Communication Portal (OCP) of this Court.

20. Accordingly, the BLAPLs stand disposed of. U.C.C. as per rules.

(V. NARASINGH)
Judge

Signature Not Verified
Digitally Signed
Signed by: AYESHA ROUT
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 11-Nov-2026 18:24:34
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