A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.5371 of 2026
CNR No. ODHC010396502026

Tuna Dora …. ***Petitioner***

Mr. A.S. Paul, Advocate

-versus-

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

Mr. S. Panigrahi, ASC

CORAM: JUSTICE V. NARASINGH

ORDER
29.10.2026

Order No.

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

2. The Petitioner is an accused in connection with Special (NDPS) Case No.03 of 2026, pending on the file of the learned Sessions Judge, Athmallik, arising out of Kishorenagar P.S. Case No.66 of 2026, for commission of the offences alleged under Sections 20(b)(ii)(C)[1]/29[2] of the Narcotic Drugs and

[1] **20. Punishment for contravention in relation to cannabis plant and cannabis.**—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable,—
(*C*) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty

Psychotropic Substances Act, 1985 (In short, "N.D.P.S. Act").

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

4. Being aggrieved by the rejection of his application for bail under Section 483[3] of the BNSS

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years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:
Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

[2] **29. Punishment for abetment and criminal conspiracy.**—(1) Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in Section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.
(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India, abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which—
(*a*) would constitute an offence if committed within India; or
(*b*) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.

[3] **483. Special powers of High Court or Court of Session regarding bail**.—(1) A High Court or Court of Session may direct,—
(*a*) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of Section 480, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;
(*b*) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:
Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice:

by the learned Special Judge, Athmallik, vide order dated 02.04.2026 in the aforementioned case, the present BLAPL has been filed.

5. The allegation against the present Petitioner is that he was found in possession of contraband (Ganja) weighing 330 kilograms and 840 grams.

6. It is submitted by the learned counsel for the Petitioner that the bail application is moved primarily on the ground of illegal detention, in as much as, though the Petitioner was detained on 11.03.2026, he is shown to have been taken into custody on 12.03.2026 and forwarded to Court on 13.03.2026. Referring to the sequence of events, it is stated by the learned counsel for the Petitioner that the same constitutes a clear infraction of Section 58[4] of the BNSS read with Article 22(2)[5] of the Constitution of India.

Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under Section 65 or sub-section (2) of Section 70 of the Bharatiya Nyaya Sanhita, 2023, give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.

[4] **58. Person arrested not to be detained more than twenty-four hours**.—No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under Section 187, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court, whether having jurisdiction or not.

[5] **22. Protection against arrest and detention in certain cases**.—(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest

7. It is the submission of the learned counsel for the Petitioner that once the Petitioner has been detained, such detention is deemed to be "custody". Hence, the stand taken by the prosecution, to the effect that the safeguards regarding arrest would operate only from the time he is actually taken into custody, has to be discarded. In this context, reliance is placed on the Division Bench judgment of this Court in ***Prabir Kumar Das v. State of Orissa***[6]***,*** as well as the judgment of the Co-ordinate Bench of this Court in ***Jati @ Susanta Rout v. State of Odisha***[7], which relied on the judgment of the Apex Court in the case of Director of Enforcement ***Directorate v. Subhash Sharma***[8].

8. Learned Public Prosecutor, Mr. Panigrahi, on the other hand, submits that, having regard to the nature of the offence and the procedural requirements, the date of detention cannot be treated as the date of arrest and, as such, in the case at hand, there is no infraction, since the Petitioner post arrest was produced before the

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to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

[6] Prabir Kumar Das v. State of Orissa, 2007 SCC OnLine Ori 343.

[7] Jati @ Susanta Rout v. State of Odisha, 2025 (III) ILR-CUT 362.

[8] Directorate v. Subhash Sharma, 2025 SCC OnLine SC 240.

concerned Magistrate within the time envisaged under Section 58[4] of the BNSS.

To fortify his submission, he relies on the judgment of the Bombay High Court in ***Sadhwi Pragya Singh Thakur v. State of Maharashtra***[9].

9. It is stated at the Bar that the said judgment was affirmed by the Apex Court. At this stage, it is apt to note that the Co-ordinate Bench of this Court, in the case of ***Jati @ Susanta Rout*** **(supra)**[7], had occasion to deal with the fine distinction which is sought to be maintained by the learned counsel for the State between "custody" and "arrest" and has held that the words "custody" and "arrest" are not synonymous, though both curtail the movement of the detainee.

10. At this juncture, it would be apposite to refer to the judgment of the Apex Court in the case of ***Subhash Sharma*** **(supra)**[8]. In the said case, Subhash Sharma was detained at IGI Airport at 11.00 hours on 5th March, 2022, but was shown as arrested at 01.15 hours on 6th March, 2022 and was produced before the learned Magistrate within 24 hours of his formal arrest.

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[9] Sadhwi Pragya Singh Thakur v. State of Maharashtra, 2010 SCC OnLine Bom 2331.

Treating the period of detention prior to the formal arrest as custody, the High Court had held the detention to be illegal.

While dealing with the challenge to such order at the behest of the Enforcement Directorate, the Apex Court, in the judgment in ***Subhash Sharma*** **(supra)**[8], held that physical custody had been taken over by the Bureau of Immigration at 11.00 hours on 5th March, 2022 and, since the Respondent was not produced before the nearest Magistrate within 24 hours, the detention was illegal.

11. In the case at hand, there is no dispute so far as the facts are concerned. It is admitted that the Petitioner was detained on 11.03.2026 but was shown to have been taken into custody on 12.03.2026 at 3.30 P.M. and was subsequently produced before the learned Magistrate on 13.03.2026.

Thus, the period of detention prior to the formal arrest assumes significance in determining compliance with the mandate of Section 58 of the BNSS.

12. The learned counsel for the State relied upon the judgment of Bombay High Court in the case of

Sadhwi Pragya Singh Thakur (supra)[9]**,** more particularly paragraphs 44, 45 and 58 thereof.

13. It is trite that a judgment has to be read in the context of its facts and, in fact, if it is read bereft of the factual matrix, one would commit the folly of treating at as a "Euclid's Theorem" missing the distinguishing features.

14. One of the glaring distinctions between the case at hand and the judgment cited on behalf of the prosecution is borne out on bare perusal of paragraph 45 of the said judgment.

For convenience of reference the said paragraph is extracted hereunder:

> "**45.** In the backdrop of these statutory provisions and the constitutional scheme, the only issue that arises for determination in this case is whether the applicant was arrested by the ATS as urged by her. In this behalf, it must be noted that the applicant states on oath that she resides away from her family. She has renounced the material world and has become a Sadhvi. She has devoted her life to religious pursuits by giving up family ties. She was residing at Surat with her family, but, thereafter she has left the family house and shifted her base to Jabalpur. In the application filed by the applicant seeking bail, the applicant has stated the above facts

in paragraph-1. In paragraph-2, she has stated that she has been staying at Jabalpur in rented accommodation of one Agarwal family from where she is conducting her religious and spiritual activities. In para graph-7 of her application, she has stated that she was officially arrested on 23/10/2008 and produced before the learned Chief Judicial Magistrate, Nasik on 24/10/2008. Therefore, it is not her case that within 24 hours of her formal arrest, she was not produced before the nearest Magistrate. From a perusal of the application, it is apparent that she did not make any grievance about the events prior to 23/10/2008, because according to her she did not have any opportunity to engage a lawyer. She could not muster enough courage. It is only on 03/11/2008 when a fresh police custody remand was sought that the applicant alleges that she could engage or otherwise avail the services of an advocate. In paragraph-10 of her application, she states that after a brief dialogue with an advocate, she placed on record that she was in the custody of the opponent right from 10/10/2008, when she was taken to Surat along with her associate and was illegally detained at Kalachowkie office till 24/10/2008. Thus, it is clear that the applicant does not allege that she was forced to leave Jabalpur or come to Surat or that she was taken into custody from Jabalpur itself. It is apparent that she

volunteered and on her own left Jabalpur for Surat. It is her case that she was in the custody of the ATS from 10/10/2008, at which stage she realised of the non-compliance with Section 50A of the IPC. It is then set out in her application for bail that she was sent to judicial custody on 03/11/2008 till 17/11/2008 and thereafter she has been in judicial custody."

14A. On a bare perusal, the facts of the case in ***Sadhwi Pragya Singh Thakur*** **(supra)**[9], which is stated to have been affirmed by the Apex Court, and that of the case at hand, are clearly at variance. As such, the said judgment is of no assistance to the prosecution.

15. Hence, considering the materials on record and taking into account the law laid down in this regard, this Court finds that the detention of the Petitioner was in gross violation of terms of the provisions contained under Section 58 of the BNSS read with Article 22(2)[5] of the Constitution of India.

It is trite that once a Court comes to a finding that arrest is illegal, this Court cannot shirk its responsibility and allow illegality to be perpetuated.

16. Accordingly, this Court directs that the Petitioner shall be released on bail on such terms and

conditions as may be fixed by the learned Court in seisin.

17. The BLAPL stands disposed of. U.C.C as per rules.

18. 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.

(V. NARASINGH)
Judge

Soumya

Signature Not Verified
Digitally Signed
Signed by: SOUMYA RANJAN SAMAL
Reason: Authentication
Location: High Court of Orissa
Date: 30-Oct-2026 21:12:33