IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3063 of 2026

CNR No. ODHC010668542026

Dambaru @ Damuru Bagh .... ***Petitioner(s)***

Mr. Rakesh Kumar Das, Advocate

-versus-

State of Odisha .... ***Opposite Party(s)***

Mr. Sarathi Jyoti Mohanty, ASC

CORAM: JUSTICE SIBO SANKAR MISHRA

ORDER

05.11.2026

Order No.

02. **1.** Heard.

2. In the present petition, the petitioner is seeking quashing of the entire criminal proceeding in connection with Machhakund P.S. Case No.64 of 2020 corresponding to T.R. Case No.39(B) of 2020 pending in the Court of the learned Additional Sessions Judge-cum-Special Judge, Koraput for the alleged commission of offences under Sections 20(b)(ii)(C)/25/29 of N.D.P.S. Act.

3. Learned counsel for the petitioner submits that although the name of the petitioner is not figuring in Machhakund P.S. Case No.64 of 2020, registered on 07.07.2020, for the alleged commission of offences under Sections 20(b)(ii)(C)/25/29 of the N.D.P.S. Act, but he was subsequently arrayed as an accused by way of a supplementary charge-sheet. He further submits that the petitioner was not arrayed as an accused even

in the preliminary charge-sheet. It is also contended by learned counsel for the petitioner that some of the co-accused persons, who have faced trial, have already been acquitted by the learned Additional Sessions Judge-cum-Special Judge, Koraput, vide judgment dated 09.10.2025 passed in T.R. Case No.39 of 2020. On these grounds, he submits that the entire criminal proceeding is liable to be quashed.

4. Learned counsel for the petitioner, further drawing the attention of this Court to paragraph-16 of the judgment dated 09.10.2025, submits that the learned trial Court, while dealing with the trial of the case of co-accused persons, had doubted the seizure of the alleged contraband articles. For ready reference, paragraph-16 of the said judgment is reproduced hereunder:-

> "16. On a cumulative analysis of the entire evidence adduced by prosecution, I find there is material discrepancy in the evidence of the official witnesses with regard to the seizure and safe custody of the seized contraband articles in police station Malkhana and thereafter there is doubt as regard to the production of the same seized article before the learned S.D.J.M., Koraput who collected sample for sending to the R.F.S.L. Berhampur for chemical examination and its safe custody. The manner of dispatching the sample for chemical examination is not in accordance to the observation of the Hon'ble Court as held in the case of Amresh Chandra Barik's case cited supra. Considering all the above fact, I am of the opinion that prosecution has failed to substantiate its charge against the accused persons Kishor Bhuyan, Sankar Sahoo, Ajay Jira, Sanyasi Khatua and Gopal Sriharia U/s-20(b)(ii)(C) of the NDPS Act beyond reasonable doubt."

5. Learned counsel for the State, on the other hand, submits that since the petitioner has been absconding, the learned trial Court, vide order dated 10.08.2023, issued non-bailable warrant (NBW) against him, which has not yet been executed.

6. I have carefully gone through the records and the judgment dated 09.10.2025 passed by the learned Additional Sessions Judge-cum-Special Judge, Koraput. Although the evidence was found insufficient to convict the co-accused persons in the trial, the evidence adduced by the prosecution insofar as the other co-accused persons in T.R. Case No.39(B) of 2020 is concerned cannot be read in favour of the petitioner. Be that as it may, since the learned Additional Sessions Judge-cum-Special Judge, Koraput, in T.R. Case No.39(B) of 2020, has already issued an NBW against the petitioner vide order dated 10.08.2023, I am inclined to set aside the said order with a direction to the petitioner to appear/surrender before the learned trial Court on or before 30.11.2026 and resort to the remedies available to him under law. It is open to the petitioner to move an appropriate application for bail, raising all the grounds urged in the present petition. If such an application is moved, the same shall be considered by the learned trial Court in accordance with law.

7. With this observation, the CRLMC is disposed of.

(S.S. Mishra)
Judge

Swarna

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Reason: Authentication
Location: High Court of Orissa
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