

**IN THE HIGH COURT OF ORISSA AT CUTTACK****I.A. No.7 of 2024**

(Arising out of WPCRL No.152 of 2023)

Sabya Sachi Panda @ **Petitioner**
Sunil @ Sarat

-versus-

State of Odisha and others **Opposite Parties**

Advocates appeared in this case:

For applicant/petitioner : Mr. B.S. Rayaguru, Advocate

For opposite parties : Mr. A. K. Sharma, AGA

CORAM:**THE HON'BLE MR. JUSTICE ARINDAM SINHA****AND****THE HON'BLE MR. JUSTICE M.S. SAHOO****J U D G M E N T**

Date of hearing and judgment: 3rd April, 2024

ARINDAM SINHA, J.

1. Mr. Rayaguru, learned advocate appears on behalf of applicant/petitioner, who is in custody. He submits, though his client has applied for change of nomenclature pursuant to report made by the Stamp Reporter that the writ petition should be



registered as CRLMP but, this Bench under assignment entry no.1 should deal with the writ petition. The entry is reproduced below.

“1. Writ Petitions relating to Habeas Corpus, Preventive Detention and parole.”

He relies on **judgment dated 9th February, 2023** of a co-ordinate Bench in **WPCRL no.93 of 2022 (D. Anita Majhi @ Mila and others v. State of Odisha and others)** for his contention.

2. Mr. Sharma, learned advocate, Additional Government Advocate appears on behalf of State and submits, the application for change of nomenclature be allowed and petitioner referred to the Bench having assignment. He draws attention to observations made in this writ petition on 5th December, 2023 by another co-ordinate Bench. The observations made in order dated 5th December, 2023 are reproduced below.

“Learned counsel for the petitioner needs some time to file an interim application for conversion of this WPCRL to CRLMP.

Put up this matter immediately after the interim application filed. In the meantime, copy of the WPCRL and the interim application be served on the learned counsel for the State.”



He submits further, prayer made by applicant in his writ petition also indicates subject matter of it to fall under nomenclature CRLMP.

3. We have perused, inter alia, paragraphs 11 to 13 of **D. Anita Majhi** (supra). The co-ordinate Bench had relied on, inter alia, judgment of the Supreme Court in **Manubhai Ratilal Patel Tr. Ushaben vs. State of Gujarat**, reported in (2013) 1 SCC 314 for declaration that unless the writ Court is satisfied a person has been committed to jail custody by virtue of an order that suffers from vice of lack of jurisdiction or absolute illegality, writ of habeas corpus cannot be issued. Having done so, the co-ordinate Bench was of considered view that the case before it was not one where a writ of habeas corpus could be issued but petitioners being poor tribal ladies caused said Bench to exercise extra ordinary power of discretion under article 226 in the Constitution.

4. On query from Court Mr. Rayaguru submits, his client has been in custody for long 9 years as an under trial in 131 cases. Of them, he has been acquitted in 89 cases. These are the circumstances of violation of his client's fundamental right to life and liberty, bringing his case within four corners of view taken in **D. Anita Majhi** (supra).



5. Applicant continues to be an undertrial in the cases pending against him. On query we ascertained, an appeal has been preferred against his conviction and sentence of life imprisonment in one of the cases. The appeal is pending before the Bench of this Court having assignment. Where petitioner is in custody as an undertrial and a convict, it cannot be said that thereby his fundamental right to life and liberty has been infringed, to persuade us to exercise discretion in directing his production for purpose of release.

D. Anita Majhi (supra) is of no aid to petitioner. Facts in this case prevent exercise of extra ordinary writ power of discretion within the roster assignment as will also create multiplicity of judicial proceedings.

6. For reasons aforesaid Registry will take steps to forthwith cause change of nomenclature and place the writ petition before the Bench having assignment.

7. The application is disposed of.

(Arindam Sinha)
Judge

(M.S. Sahoo)
Judge

Prasant