



IN THE HIGH COURT OF ORISSA AT CUTTACK
BLAPL No. 8474 of 2025

(In the matter of application under Section 483 of BNSS, 2023).

Sushanta Dhalasamanta ... ***Petitioner***

-versus-

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

For Petitioner : ***Mr. S.C. Mohapatra, Sr. Advocate along with Mr. C. Samantaray, Advocate***

For Opposite Party : ***Mr. P.S. Nayak, Specially engaged counsel for the State***

CORAM: JUSTICE G. SATAPATHY

DATE OF HEARING & JUDGMENT:04.05.2026(ORAL)

G. Satapathy, J.

1. This is an application U/S.483 of BNSS by the petitioner for grant of bail in connection with ST Case No. 137 of 2016 arising out of Bidanasi PS Case No. 86 of 2004 pending in the file of learned 1st Addl. Sessions Judge, Cuttack for commission of offences punishable U/Ss.302/120B/34 of IPC r/w Sections 25/27 of the Arms Act, on the main allegation of committing murder of one Akhana @ Akhaya Kumar Malia, along with co-accused person by entering into conspiracy with each other in furtherance of their common intention.



2. Heard, Mr. Soura Chandra Mohapatra, learned Sr. counsel who is being assisted by Mr. Chandan Samantaray, learned counsel for the Petitioner and Mr. Partha Sarathi Nayak, learned specially engaged counsel for the State in the matter and perused the record.

3. After having considered the rival submissions upon perusal of record, there appears allegation against the Petitioner for committing murder of the deceased along with co-accused person, but it is not disputed that the Petitioner is in custody since 08.04.2016 with framing of charge on 29.07.2016, however, the trial is yet to be concluded even after more than 10 years custody of the Petitioner and only 9 out of 18 charge sheeted witnesses have been examined till today and out of the 9 witnesses, 7 witnesses have become hostile, but PW8 is a Constable who had stated about receiving information about the deceased shot dead and PW7 is the Postmortem conducting Doctor. It is no doubt true that Mr. Partha Sarathi Nayak, learned Specially engaged counsel for the State by relying upon the statement of Krushna Chandra Malia and Dibakar Behera



have tried to oppose the bail application of the Petitioner, but the certified copy of the order sheet dated 07.04.2026 & 22.04.2026 supplied by the learned counsel for the Petitioner reveals that the summon issued against the witness Krushna Chandra Malia received back with a report of Process Server that he has already expired since long and the summon issued against the witness Dibakar Behera is received back with report of Process Server that the summoinee has already expired for more than 7 years. It is, therefore, clear that the effort of the learned Special Counsel by relying upon the decision of ***Pakala Narayana Swain Vrs. Emperor; MANU/ PR/ 0001/1939*** to make the statement of witness Krushna Chandra Malia remains elusive. Further, co-accused Sushil Kumar Dhalasamanta who is similarly situated with present accused has already been acquitted by the learned trial Court vide Judgment dated 30.09.2010 passed in ST Case No. 155 of 2010 and on being asked, Mr. Nayak submits that he has got no instruction as to whether the State has challenged the said impugned judgment or not,



however, Mr. Soura Chandra Mohapatra, learned Sr. Counsel confirms that the aforesaid judgment has never been challenged by the State.

4. What is most surprising is that on the last date, on being asked by this Court, Mr. Partha Sarathi Nayak, learned Specially engaged counsel for the State undertook to inform the Court by way of an affidavit as to when the prosecution would probably conclude the examination of witnesses, but the affidavit filed by the IIC, Bidanasi PS does not reveal any date or time for concluding the examination of prosecution witness and his reply in the affidavit is speculative one which is evident from his reply that the prosecution will take all sincere steps for early conclusion of the case as per the schedule date of the learned trial Court. What is more astonishing that the learned trial Court in its report has made it clear that it would take one year to conclude the trial, nevertheless the petitioner is in custody for more than ten years without conclusion of trial. It is also equally unfortunate, but true that the prosecution on 22.04.2026 has filed petition U/S. 311 CrPC to issue



summons against witnesses namely Bhagirathi Mohanty, Joseph Eka, R.N. Swain, Bibhuti Sethi, Tanmaya Pattnaik, Jayanta Panda & Bikash Mohapatra, but such application is pending for disposal. The effort of the prosecution only seems that they want to unnecessary drag the case inasmuch as they could not file such a petition within 10 years of the custody of the petitioner, but when this Court asks to intimate as to when the prosecution would conclude examination of witnesses, this petition has been filed. No doubt the Petitioner is having some criminal antecedents, but mere existence of criminal antecedents would not be sufficient to refuse bail, unless there is material to indicate that the Petitioner in the event of enlargement on bail would terrorize the material witnesses whose evidence are material for the prosecution case. In the context of criminal antecedents, this Court considers it apt to refer to the decision in ***Ayub Khan Vrs. State of Rajasthan; 2024 SCC Online SC 3763***, the Apex Court in Paragraph-10 has been pleased to observe that there may be a case where a Court can grant bail only on the



grounds of long incarceration and the presence of antecedents may not be relevant in such a case. In this case, the witnesses whose statements the learned Specially engaged counsel rely on to oppose the bail application of the petitioner have already been reported to be dead. It is also not in dispute that the Petitioner is in custody for more than 10 years. In this context, it is considered appropriate to refer to the very recent decision in ***Vaibhav Singh Vrs. State of Uttar Pradesh; 2026 LiveLaw(SC) 439***, wherein in a similar situation of petitioner having been in custody for more than nine years, the Apex Court in Paragraph-11 & 12 has held as under:-

"11. This is a gross case wherein the fundamental right of the petitioner to have a speedy trial as enshrined under Article 21 of the Constitution could be said to have been infringed.

12. In many of our Judgments and on many occasions, we have said in so many words that howsoever grave the crime may be, but if the accused is denied his right of speedy trial and is languishing in jail for years together and for no fault on his part, he cannot be kept in jail for indefinite period."

5. In the aforesaid facts and situation and taking into account the long drawn trial without the assurance



of right to speedy trial to the accused and that too, when co-accused standing on similar footing has already been acquitted in a separated trial and the witnesses already examined till today having not supported the prosecution allegation against the Petitioner with material witnesses like Krushna Chandra Malia and Dibakar Behera already being reported to be dead , this Court without expressing any view on merits admits the Petitioner to bail.

6. Hence, the bail application of the Petitioners stands allowed and they are allowed to go on bail on furnishing bail bonds of Rs.50,000/- (Rupees Fifty Thousand) only each with two solvent sureties for the like amount to the satisfaction of the learned Court in seisin of the case on such terms and conditions as deem fit and proper by it with following conditions:-

*(i) the petitioner in the course of trial shall attend the trial Court on each date of posting without fail unless his attendance is dispensed with. **In case the Petitioner fails without sufficient cause to appear in the Court in accordance with the terms of the bail, the learned trial Court may proceed against the Petitioner for offence U/S.269 of BNS, 2023 in accordance with law.***



(ii) the petitioner shall not threaten/ influence/ induce/ coerce any of the witnesses acquainted with the facts of the case so as to dissuade them disclosing such facts before the Court; and

This Court, however, reserves liberty to the State and the informant to file appropriate application for cancellation of bail of the petitioner in case of violation of any of the above condition or a case for cancellation of bail is otherwise made out. In such event of application for cancellation of bail, the learned Court in seisin over the matter is at liberty to pass appropriate order in accordance with law without further reference to this Court.

7. Accordingly, the BLAPL stands disposed of. Issue urgent certified copy of the order as per Rules. A soft copy of this order be immediately communicated to the concerned Court, who shall afterwards communicate the same to the concerned Jail through e-mail for reference.

(G. Satapathy)
Judge

*Orissa High Court, Cuttack,
Dated the 4th day of May, 2026/Priyajit*