

**IN THE HIGH COURT OF ORISSA AT CUTTACK****CRLMC No.866 of 2026**

(In the matter of a petition under Section 528 of the Bharatiya  
Nagarik Suraksha Sanhita, 2023).

*Kartika Lama @ Bahadur @ Kartik* .... *Petitioner(s)*  
-versus-  
*State of Odisha* .... *Opposite Party (s)*

Advocates appeared in this case through Hybrid Arrangement Mode:

*For Petitioner (s)* : *Mr. Pranaya Kumar Maharaj, Adv.*  
*For Respondent(s)* : *Mr. Debasish Nayak, AGA*

**CORAM:**

**DR. JUSTICE SANJEEB K PANIGRAHI**

**DATE OF HEARING: -15.04.2026**

**DATE OF JUDGMENT: -15.05.2026**

**Dr. Sanjeeb K Panigrahi, J.**

1. The petitioner has filed the present CRLMC petition seeking quashing of the orders dated 07.02.2026 and 10.02.2026 passed in T.R. Case No.34 of 2021 by the learned Addl. Sessions Judge-cum-Special Judge, Jeypore.

**I. FACTUAL MATRIX:**

2. The petitioner has been arrayed as an accused in connection with T.R. Case No.34 of 2021 arising out of Jeypore Sadar P.S. Case No.85 of 2021 registered under Section 20(b)(ii)(C) of the N.D.P.S. Act, which is pending before the learned Addl. Sessions Judge-cum-Special Judge, Jeypore.



3. The prosecution case, in brief, is that the petitioner was implicated on the basis of the confessional statement of a co-accused. It is further stated that pursuant to a representation submitted by the wife of the petitioner, an inquiry was conducted by the higher authorities.
4. It further appears that in CRLMC No.4802 of 2024, this Court, vide order dated 23.12.2024, directed that no coercive action be taken against the petitioner. The petitioner has stated that on 07.02.2026, learned counsel appearing on his behalf brought the aforesaid order to the notice of the learned trial court, pursuant whereunto the impugned orders of remand came to be passed.
5. Being aggrieved by the aforesaid orders, the present CRLMC petition has been filed.

## **II. SUBMISSIONS OF THE PETITIONER:**

6. Learned counsel for the petitioner made the following submissions in support of his contentions:
  - i. The petitioner submitted that the constitutional safeguard available for the protection of a citizen has been violated in the instant case, thereby rendering the remand of the accused illegal and not sustainable in the eye of law.
  - ii. The petitioner submitted that the police cannot override a valid stay order passed by the High Court and, if such arrest is effected, the same may constitute contempt of court and violation of personal liberty.
  - iii. The petitioner submitted that the maxim *actus curiae neminem gravabit*, meaning thereby that an act of the Court shall prejudice no man, is founded upon justice and good sense and affords a safe and



certain guide for the administration of law. In support of the said contention, reliance was placed upon the observations of the Supreme Court in *A.R. Antulay v. R.S. Nayak*<sup>1</sup>.

- iv. Reliance was placed upon the decision in *Tusharbhai Rajnikantbhai Shah v. Kamal Dayani and others*<sup>2</sup>, wherein it was observed that the exercise of seeking police custody remand during the currency of the interim protection granted to the petitioner was in sheer defiance of the order of the Court and tantamount to contempt on the face of the record. It was further observed that, while seeking and procuring police custody remand of the accused in the teeth of the order of the Court, the Investigating Officer was guilty of gross contempt.
- v. The petitioner submitted that the case in which the stay order was passed pertains to the year 2021 and the higher authorities, after inquiry, opined that there were no materials against the accused except the confessional statement of the co-accused and, therefore, they were unable to proceed with the case. However, the accused was arrested in connection with T.R. Case No.32 of 2025 and was remanded on 10.02.2026 in connection with T.R. Case No.34 of 2021, which is illegal, not sustainable in the eye of law and liable to be set aside. Hence, interference of this Court is highly warranted.

### III. SUBMISSIONS OF THE OPPOSITE PARTY:

7. Per contra, learned counsel for the opposite party made the following submissions in support of its contentions:

---

<sup>1</sup> (1988) 2 SCC 602.

<sup>2</sup> (2025) 1 SCC 753.



- i.** The impugned order dated 07.02.2026 passed by the learned Addl. Sessions Judge, Jeypore clearly reveals that, upon perusal of the case record, the learned court was prima facie satisfied regarding the involvement of the petitioner in T.R. Case No.34 of 2021 under Section 20(b)(ii)(C) of the N.D.P.S. Act. Accordingly, production warrant under Section 267 Cr.P.C. was issued to the Superintendent, Special Jail, Jeypore for production of the petitioner on 10.02.2026.
- ii.** It was further submitted that Section 267(1) Cr.P.C. empowers the Criminal Court to direct production of a person confined or detained in prison for answering to a charge of an offence or for the purpose of any proceeding against him.
- iii.** It was submitted that there is no specific provision in the Cr.P.C. dealing with a situation where a person, already detained or confined in prison under the orders of a Court or Magistrate, is required for investigation in another case. It was submitted that, in such circumstances, the accused cannot be arrested without warrant since he is already in judicial custody and confined in prison, and such person cannot be taken out of jail without direction of the Court under whose order he has been confined or pursuant to a production warrant issued by a competent Court.
- iv.** It was submitted that when the Investigating Officer finds it necessary to have custody of such person for proper investigation of the case, the Investigating Officer has to make a request before the Court having jurisdiction to issue a production warrant under Section 267 Cr.P.C. so that the accused person may be produced before the Court and



thereafter the Court may consider the request of the police to grant police custody or pass any other appropriate order.

- v. The learned counsel for the opposite party submitted that the law is well settled that the limitation imposed by Section 167 Cr.P.C. does not apply to a different occurrence in which involvement of the accused is disclosed. Such an occurrence would constitute a different transaction and, if an accused is in judicial custody in connection with one case, the police can seek detention of the accused in police custody in another case for the purpose of investigation of such case. Therefore, re-arrest or second arrest in a different case is perfectly legal.
- vi. It was submitted that while the petitioner was in custody in connection with T.R. No.32 of 2025, the Investigating Officer made a prayer before the learned Addl. Sessions Judge, Jeypore, who, vide order dated 07.02.2026, directed production of the accused from jail custody in the present T.R. No.34 of 2021. Therefore, the application of the petitioner on the strength of the order dated 23.12.2024 passed in CRLMC No.4802 of 2024 directing that no coercive action be taken was rightly deemed infructuous. As such, the impugned orders dated 07.02.2026 and 10.02.2026 passed by the learned Addl. Sessions Judge, Jeypore warrant no interference.
- vii. The learned counsel for the opposite party submitted that on 12.02.2026, the petitioner was produced before the learned Addl. Sessions Judge, Jeypore after expiry of one day police remand on 11.02.2026, on which date he was remanded to jail custody in T.R. No.35 of 2021, which was inadvertently mentioned as T.R. No.32 of



2025 in the reply filed by the State. However, the order dated 12.02.2026 is not under challenge in the present petition.

- viii. The learned counsel for the opposite party submitted that, for the aforesaid reasons, the present petition seeking quashing of the impugned orders dated 07.02.2026 and 10.02.2026 passed by the learned Addl. Sessions Judge, Jeypore is liable to be dismissed.
- ix. Reliance was placed upon the observations made in *CBI v. Anupam J. Kulkarni*<sup>3</sup> and *Susan Abraham v. State of Maharashtra and Others*<sup>4</sup>.

#### IV. COURT'S REASONING AND ANALYSIS:

8. Heard learned counsel for the parties and perused the material on record.
9. At the outset, it is apposite to note that the principal grievance of the petitioner in the present case is that despite the interim order dated 23.12.2024 passed by this Court in CRLMC No.4802 of 2024 directing that no coercive action shall be taken against the petitioner in connection with T.R. Case No.34 of 2021, the learned trial court proceeded to pass the impugned orders dated 07.02.2026 and 10.02.2026 whereby production warrant was issued against the petitioner and subsequently one day police remand was granted to the Investigating Officer.
10. On perusal of the impugned order dated 07.02.2026, it transpires that the learned trial court, upon consideration of the case record and materials placed before it, recorded prima facie satisfaction regarding

---

<sup>3</sup> (1992) 3 SCC 141.

<sup>4</sup> 2010 SCC OnLine Bom 98.



involvement of the petitioner in the offence punishable under Section 20(b)(ii)(C) of the N.D.P.S. Act and accordingly directed issuance of production warrant for production of the petitioner from Special Jail, Jeypore. Thereafter, by order dated 10.02.2026, upon production of the petitioner before the learned court, the petitioner was formally remanded in connection with the present case and police remand for one day was allowed.

11. At this juncture, it is necessary to examine the scope of the interim protection granted by this Court vide order dated 23.12.2024 in CRLMC No.4802 of 2024 wherein it was directed that no coercive action shall be taken against the petitioner in connection with the present case. The expression “no coercive action” employed by the Court was intended to protect the liberty of the petitioner during pendency of the proceeding.
12. In the considered opinion of this Court, once such protection had been granted by this Court and the same continued to remain in force, the learned trial court ought to have exercised due caution while considering the prayer of the Investigating Officer seeking remand of the petitioner in connection with the present case. The materials on record reveal that the aforesaid interim order of this Court had been brought to the notice of the learned trial court.
13. Though the petitioner was already in judicial custody in connection with another case, namely T.R. No.32 of 2025, the fact remains that pursuant to the impugned orders, the petitioner was formally remanded and taken into police custody in connection with the present



case despite the subsistence of the interim protection granted by this Court.

14. The contention advanced on behalf of the opposite party that the petitioner was not formally arrested but was merely produced from judicial custody pursuant to production warrant issued under Section 267 Cr.P.C. cannot be accepted in the peculiar facts and circumstances of the present case. The impugned orders ultimately resulted in police remand of the petitioner in connection with the present case notwithstanding the subsisting interim protection granted by this Court.
15. Though reliance has been placed by the opposite party upon *Anupam J. Kulkarni (supra)* to contend that police custody in another case is permissible even where the accused is already in judicial custody, the said proposition is not in dispute. However, the peculiar feature of the present case is the subsistence of the interim protection granted by this Court directing that no coercive action shall be taken against the petitioner in connection with the present case.
16. This Court is also of the view that once the order dated 23.12.2024 passed by this Court was brought to the notice of the learned trial court, the appropriate course would have been to defer further coercive steps instead of proceeding to allow police remand in connection with the present case.

#### V. CONCLUSION:

17. In view of the aforesaid facts and circumstances, this Court is of the considered opinion that the impugned orders dated 07.02.2026 and



10.02.2026 passed by the learned Addl. Sessions Judge-cum-Special Judge, Jeypore cannot be sustained in the eye of law and are accordingly liable to be set aside.

18. Accordingly, the CRLMC petition stands **allowed**. The impugned orders dated 07.02.2026 and 10.02.2026 passed by the learned Addl. Sessions Judge-cum-Special Judge, Jeypore in T.R. Case No.34 of 2021 are hereby quashed.
19. Interim order, if any, passed earlier stands vacated.

*(Dr. Sanjeeb K Panigrahi)*  
*Judge*

*Orissa High Court, Cuttack,  
Dated the 15<sup>th</sup> May, 2026*