

**THE HIGH COURT OF ORISSA AT CUTTACK****CRLMC No. 2220 of 2024****CRLMC No. 2196 of 2024****CRLMC No. 2197 of 2024****CRLMC No. 2208 of 2024****CRLMC No. 2224 of 2024**

(In the matter of applications under Sections 482 of the Criminal Procedure Code, 1973)

Basudev Behera

.....

Petitioner***(In all above CRLMCs)***

-Versus-

State of Odisha

.....

Opposite Party

For the Petitioners : Mr. Bijay Kumar Mohanty, Advocate

For the Opposite Party : Mr. Bibekananda Bhuyan,
Advocate for OPID

CORAM:**THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA**

Date of Hearing: 23.12.2024 :: Date of Judgment: 13.02.2025

S.S. Mishra, J. In delivering this judgment, I am reminded of a story I heard as a child - one that speaks of the profound importance of liberty and freedom for a human being. The story goes as follows: *A jail barrack man was arrested on allegation of a petty crime and was put behind bars.*



This broke him into tears. The co-prisoner observantly said it shouldn't make any difference to him as he has been all along sitting on the other side of the door in the barrack for last 20 years, it shouldn't bother him now. The barrack man replied with all his consciousness, sitting on the other side of the door for 20 years was unrestrictive with all his freedom and liberty at his command. Today my liberty is withdrawn which indeed was my life. Liberty is the breath of life. Sans it, it's like a bird with crippled wings.

Much like the story, the case before this Court is not purely about the procedural jargon that the petitioner is facing, but about his fundamental right of life and liberty enshrined under Article 21 of the Constitution of India. With this prospective, I now venture into the facts of the present case.

Entitlement of the petitioner of his release from the custody after completion of more than 50% of the maximum sentence prescribed for the offences he is charged with the issues involved in all these five cases. Therefore, analogously the matters are being heard and by a common Judgment, all the five matters are being disposed of.



2. Heard Mr. B.K. Mohanty, learned counsel for the petitioner and Mr. Bibekananda Bhuyan, learned Counsel for the OPID.

3. For better appreciation of facts of each case and developments that have taken place in the interregnum are enumerated herein in seriatim.

A. CRLMC No.2220 of 2024

An FIR lodged by the informant, Arun Rana, who alleged that he had given a total amount of Rs.16,50,000/- to six individuals associated with M/s. Satyam Sai Infrastructure Office in Cuttack for the purchase of land at two locations. The petitioner, Basudev Behera, issued two cheques amounting to Rs.4,00,000/- (Rs.3,00,000/- and Rs.1,00,000/-), which were dishonored due to insufficient funds and account closure. The incident was later published in a newspaper, leading to the arrest of four individuals by Chauliaganj Police Station. The petitioner was implicated under Sections 420/34 of the IPC read with Section 6 of the OPID Act, alleging fraudulent inducement and misappropriation of money without fulfilling the promise of land transaction.

* Petitioner was taken into custody on 13.11.2017.



- * The petitioner had earlier moved for bail before the High Court in BLAPL No.1050 of 2019, and bail was granted on 15.05.2019, subject to his furnishing a cash security of Rs.10,00,000/-.
- * Unable to comply with the condition, he filed I.A. No.61/2020, seeking modification of bail conditions.
- * The High Court, vide order dated 12.02.2020, reduced the cash security to Rs.5,00,000/-, but the petitioner was still unable to arrange the amount and remained in custody.

B. CRLMC No. 2196 of 2024

This case concerns with a complaint filed by Jitendra Kumar Nayak and Priyaranjan Behera on 09.11.2017, alleging that the petitioner misrepresented himself as the Managing Partner of M/s. Satyam Sai Infratech and deceived them into paying Rs.2,50,000/- and Rs.1,60,000/- respectively, for land transactions. The petitioner failed to execute the sale deed and issued cheque, which on presentation got bounced. The offences alleged against the petitioner include Sections 420/468/471/34 of IPC r/w Section 6 of the OPID Act.



- * The petitioner filed a bail application being BLAPL No.1063 of 2019 before this Court.
- * This Court granted bail on 15.05.2019, with the condition to furnish cash security of ₹1,00,000/-.
- * Due to financial constraints, the petitioner filed I.A. No.64/2020 for modification of bail conditions.
- * On 12.02.2020, this Court although reduced the cash security to ₹40,000/-, but the petitioner was still unable to arrange the amount and remained in custody.

C. CRLMC No. 2197 of 2024

An FIR lodged by the informant, Ajay Kumar Sahoo, who alleged that on 10.02.2017, he had engaged with the petitioner and his wife, Deepanjali Sahoo, for a land transaction worth ₹10,00,000/- at M/s. Satyam Sai Infratech. The amount was paid through Bijay Sahoo, but the accused failed to provide the land and returned only ₹1,50,000/-. As per an agreement dated 17.06.2017, the accused promised to refund the remaining amount by 28.06.2017. He issued cheques totalling ₹1,80,000/- and assured further payment by 15.07.2017. However,



instead of fulfilling his commitment, the accused threatened the informant over phone, denying any wrongdoing and warned him not to file a police complaint. The accused's wife also allegedly threatened the informant, disclaiming any knowledge of the transaction. As a result, an FIR was registered, implicating the petitioner for commission of alleged offences under Sections 420/ 468/ 294/ 506/34 of IPC and Section 6 of the OPID Act.

- * The petitioner filed a bail application being BLAPL No.1951 of 2019 before this Court.
- * This Court granted bail on 11.09.2019, with the condition to furnish cash security of ₹5,00,000/-.
- * The petitioner filed I.A. No.62/2020 for modification of bail conditions.
- * On 06.02.2020, this Court although reduced the cash security to ₹2,00,000/-, but the petitioner was still unable to arrange the amount and remained in custody.



D. CRLMC No. 2208 of 2024

An FIR lodged by the informant, Smt. Kabita Mohanty, a 47 year-old resident of Mahanadi Vihar. She alleged that the petitioner, representing M/s. Satyam Sai Infratech Real Estate, fraudulently convinced her to pay Rs.1,70,000/- for a land transaction that never materialized. After facing delays and discovering that the petitioner had no actual land to offer, she realized that she had been deceived. The investigation revealed that the petitioner had similarly collected large sums from various individuals, issuing cheques, all of which got bounced on presentation and misrepresenting ownership of land. Basing on these allegations, the petitioner was charged for alleged commission of offences under Sections 420/468/471/34 of IPC read with Section 6 of the OPID Act.

- * The petitioner moved for bail before this Court in BLAPL No.1953 of 2019.
- * This Court granted bail on 11.09.2019, subject to furnishing cash security of Rs.1,50,000/-.
- * The petitioner filed I.A. No.63/2020 for modification of bail conditions.



- * On 06.02.2020, this Court reduced the cash security to Rs.57,500/-, but the petitioner was still unable to arrange funds and continued in custody.

E. CRLMC No. 2224 of 2024

A complaint was lodged by Snehalata Sukla on 11.11.2017, alleging that her husband, Chakradhar Sukla paid Rs.8,00,000/- to the petitioner for purchase of a plot at Gopalpur, which the petitioner failed to deliver. Despite repeated assurances, the petitioner did not return the money, leading to file a complaint for which FIR has been registered against the petitioner for alleged commission of offences under Sections 420/34 IPC r/w Section 6 of the OPID Act.

- * The petitioner filed a bail application being BLAPL No.1057 of 2019 before this Court.
- * This Court granted bail on 15.05.2019, subject to furnishing a cash security of ₹5,00,000/-.
- * The petitioner filed I.A. No.64/2020 for modification of bail conditions.



- * On 12.02.2020, this Court reduced the cash security to ₹2,00,000/-, but the petitioner was still unable to arrange the amount and remained in custody.

In the above five cases the accused has been in custody for more than seven years and he has been charged under various offences of the IPC and Section 6 of the OPID Act, 2011. For ready reference, the provision of the penal Sections under which the accused is charged are reproduced below: -

420 of IPC: - Cheating and dishonestly inducing delivery of property: -

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 468 of I.P.C Forgery for purpose of cheating:

Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 471 of I.P.C Using as genuine a forged document or electronic record: -

Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be



a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.

Section 506 of I.P.C. Punishment for criminal intimidation. —

Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; If threat be to cause death or grievous hurt, etc.— And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Section 294 of I.P.C. Obscene acts and songs: -

Whoever, to the annoyance of others— (a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Section 6 of The Odisha Protection Of Interests Of Depositors (In Financial Establishments) Act, 2011: - *Notwithstanding anything contained in section 3, where any Financial Establishment defaults the return of the deposit or defaults the payment of interest on the deposit or fails to return in any kind or fails to render service for which the deposit have been made, every person responsible for the management of the affairs of the Financial Establishment shall be punished with imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees and such Financial Establishment is also liable for a fine which may extend to two lakh rupees.*

Of all the offences, petitioner has been charged for and he is facing trial, the maximum sentence prescribed is ten years as has been reflecting



from the provisions extracted herein above.

4. In the aforementioned five cases, the petitioner separately moved bail application for grant of regular bail. Besides the ground on merits of the individual cases, petitioner precisely contended that under statutory command of Section 436A of the Cr.P.C., he is entitled to be released on bail having undergone more than 50% of the maximum sentence prescribed for the offences he has been charged for and facing trial. The learned Trial Court rejected the application by separate order in all the five cases. The ground for rejection of the bail application in all the five matters are similar and for ready reference operative part of the impugned order passed in one of the aforementioned cases, namely, in CRLMC No.2224 of 2024 is reproduced below:

“Perused the case record and rival submissions of the learned counsel for accused-petitioner as well as the learned Spl.PP for the State. It is found from the record that accusation against Basudev Behera in the alleged prosecution case relates to offence punishable u/s 420 IPC r/w Sec.6 of the OPID Act, 2011. Perused the operative portion of order No.05 dtd. 15.05.2019 passed by the Hon'ble High Court of Orissa in BLAPL No.1057 of 2019 which is read as follows

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XXX

XXX

"Considering the submissions and the circumstances, it is directed that let the petitioner be released on bail by furnishing cash security of Rs.5,00,000/- (Rupees five lakhs) besides other



conditions to be imposed by the learned trial court as deemed proper."

XXX

XXX

XXX

Further on perusal of order No.06 dtd.20.02.2019, of the Hon'ble High Court of Orissa passed in IA No.55 of 2019 arising out of BLAPL No.1057 of 2019, it is found that Hon'ble High Court of Orissa in the above order have modified the amount of cash security to be furnished by accused-petitioner. The accused-petitioner has already been granted to release on bail but due to non-furnishing of cash security as imposed by the Hon'ble High Court of Orissa vide order dtd. 15.05.2019 in BLAPL No.1057 of 2019, the accused-petitioner is still in jail custody. As the accused-petitioner has already been granted bail by the Hon'ble High Court of Orissa, therefore the present bail petition moved by the learned counsel for accused-petitioner u/s 436A Cr.P.C is not maintainable in the eye of law. Hence, the bail petition stands rejected."

Petitioner is aggrieved by such rejections and hence challenged the same by filing five different cases.

5. Mr. Mohanty, learned Counsel for the petitioner, submitted that, petitioner had empathetically relied upon Section 436A before the learned Presiding Officer, Designated Court under OPID Act, Cuttack, while pressing for regular bail with a prayer to release him on the ground that he has already undergone detention for the period of more than one-half of the maximum period of sentence prescribed for the offences charged against him. He emphasized the provision of Section 436A of Cr.P.C. which reads as under:



“Section 436A of Cr.P.C – Maximum period for which an under-trial prisoner can be detained: -

Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties;

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties;

Provided further that no such person shall in any case be detained during the period of investigation inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.”

The provision clearly limits the duration of detention for under-trial prisoners during investigation, inquiry or trial of an offence not punishable by death to one half of the maximum period specified for that offence under the relevant law. This provision gives a statutory right to all the accused to be released after completion of more than 50% sentence prescribed for the offences they are charged for, except for the offences for which punishment of death has been specified as one of the punishment. The provision is more or less akin to Section 167(2) of Cr.P.C.



6. The learned counsel for the State while objecting to the prayer made by the petitioner, submitted that the trial court has rightly rejected the bail application, because in the form of bail application, the petitioner indeed has been seeking for the modification of conditions of bail imposed by this Court. The learned trial court had no jurisdiction to modify any condition imposed by this Court while admitting the petitioner on bail. Therefore, the petitioner needs to move separate application in all the cases before this Court seeking variation of bail conditions. He further submitted that this is not a case u/s.436A of Cr.P.C. In that view of the matter, the impugned order is justified and interference is not called for.

7. In the conspectus of the above background, the petitioner beseeches this Court to consider the application under Section 436A in the present case vis-à-vis his fundamental right enshrined under Article 21 of the Constitution of India. Liberty of a citizen supersedes the procedural barriers created under law. The Hon'ble Supreme Court in



Satender Kumar Antil Vs. Central Bureau of Investigation & Anr¹ has held that Section 436A of the Code of Criminal Procedure, inserted by Act 25 of 2005, serves the vital objective of preventing excessive detention of undertrial prisoners. This provision mandates that an under-trial, who has undergone detention for one-half of the maximum prescribed sentence for the offence shall be released on personal bond, with or without sureties. The use of expression "shall" in the provision signifies its mandatory nature, eliminating the necessity for a formal bail application, particularly when delays are not attributable to the accused. The period of incarceration includes custody during investigation, inquiry, trial, appeal and revision. The Hon'ble Supreme Court in the judgment has held thus: -

“46. Section 436A of the Code has been inserted by Act 25 of 2005. This provision has got a laudable object behind it, particularly from the point of view of granting bail. This provision draws the maximum period for which an undertrial prisoner can be detained. This period has to be reckoned with the custody of the accused during the investigation, inquiry and trial. We have already explained that the word ‘trial’ will have to be given an expanded meaning particularly when an appeal or admission is pending. Thus, in a case where an appeal is pending for a longer time, to bring it under Section 436A, the period of incarceration in all forms will have to be reckoned, and so also for the revision.

¹ 2022 LiveLaw (SC) 577



47. Under this provision, when a person has undergone detention for a period extending to one-half of the maximum period of imprisonment specified for that offense, he shall be released by the court on his personal bond with or without sureties. The word ‘shall’ clearly denotes the mandatory compliance of this provision. We do feel that there is not even a need for a bail application in a case of this nature particularly when the reasons for delay are not attributable against the accused. We are also conscious of the fact that while taking a decision the public prosecutor is to be heard, and the court, if it is of the view that there is a need for continued detention longer than one-half of the said period, has to do so. However, such an exercise of power is expected to be undertaken sparingly being an exception to the general rule. Once again, we have to reiterate that **‘bail is the rule and jail is an exception’** coupled with the principle governing the presumption of innocence. We have no doubt in our mind that this provision is a substantive one, facilitating liberty, being the core intendment of Article 21. The only caveat as furnished under the Explanation being the delay in the proceeding caused on account of the accused to be excluded...”

In *Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.*², the Hon’ble Apex Court echoed the same view that Section 436A of the Code of Criminal Procedure, 1973, is a beneficial provision aimed at upholding the right to a speedy trial under Article 21 of the Constitution. It establishes the outer limit for detention of undertrial prisoners, beyond which they should not be held unless specific reasons are recorded in writing by the court. However, the relief under this Section is not automatic and must be granted on a case-to-case basis, unlike default bail under Section 167 Cr.P.C. The Court has

² [2022] 6 S.C.R. 382



discretion to extend detention beyond one-half of the maximum sentence prescribed for the offence, subject to conditions ensuring the accused's availability for trial. It is further held that the State has a duty to ensure that trials, particularly in cases with stringent bail conditions are concluded expeditiously, preventing prolonged incarceration without trial. While this provision does not apply to offences punishable with the death penalty, it functions as a statutory bail provision, akin to Section 167 Cr.P.C. The Hon'ble Apex Court held as under:

"147. Section 436A of the 1973 Code, is a wholesome beneficial provision, which is for effectuating the right of speedy trial guaranteed by Article 21 of the Constitution and which merely specifies the outer limits within which the trial is expected to be concluded, failing which, the accused ought not to be detained further. Indeed, Section 436A of the 1973 Code also contemplates that the relief under this provision cannot be granted mechanically. It is still within the discretion of the Court, unlike the default bail under Section 167 of the 1973 Code. Under Section 436A of the 1973 Code, however, the Court is required to consider the relief on case-to-case basis. As the proviso therein itself recognises that, in a given case, the detention can be continued by the Court even longer than one-half of the period, for which, reasons are to be recorded by it in writing and also by imposing such terms and conditions so as to ensure that after release, the accused makes himself/herself available for expeditious completion of the trial.

148. However, that does not mean that the principle enunciated by this Court in Supreme Court Legal Aid Committee Representing Undertrial Prisoners, to ameliorate the agony and pain of persons kept in jail for unreasonably long time, even without trial, can be whittled down on such specious plea of the State. If the Parliament/Legislature provides for stringent provision of no bail, unless the stringent conditions are fulfilled, it is the bounden duty of



the State to ensure that such trials get precedence and are concluded within a reasonable time, at least before the accused undergoes detention for a period extending up to one-half of the maximum period of imprisonment specified for the concerned offence by law. [Be it noted, this provision (Section 436A of the 1973 Code) is not available to accused who is facing trial for offences punishable with death sentence].

149. In our opinion, therefore, Section 436A needs to be construed as a statutory bail provision and akin to Section 167 of the 1973 Code. Notably, learned Solicitor General has fairly accepted during the arguments and also restated in the written notes that the mandate of Section 167 of the 1973 Code would apply with full force even to cases falling under Section 3 of the 2002 Act, regarding money-laundering offences. On the same logic, we must hold that Section 436A of the 1973 Code could be invoked by accused arrested for offence punishable under the 2002 Act, being a statutory bail."

In the judgement of ***Bhim Singh Vs Union of India (UOI)***³ the

Hon'ble Apex Court also expressed similar view, and held thus: -

"5. Having given our thoughtful consideration to the legislative policy engrafted in Section 436A and large number of under-trial prisoners housed in the prisons, we are of the considered view that some order deserves to be passed by us so that the under-trial prisoners do not continue to be detained in prison beyond the maximum period provided Under Section 436A.

6. We, accordingly, direct that jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall hold one sitting in a week in each jail/prison for two months commencing from 1st October, 2014 for the purposes of effective implementation of 436A of the Code of Criminal Procedure. In its sittings in jail, the above judicial officers shall identify the under-trial prisoners who have completed half period of the maximum period or maximum period of imprisonment provided for the said offence under the law and after complying with

³ (2015) 13 SCC 605



the procedure prescribed Under Section 436A pass an appropriate order in jail itself for release of such under-trial prisoners who fulfil the requirement of Section 436A for their release immediately. Such jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall submit the report of each of such sitting to the Registrar General of the High Court and at the end of two months, the Registrar General of each High Court shall submit the report to the Secretary General of this Court without any delay.”

This Court also deems fit and proper to refer to the judgement of Hon’ble Bombay High Court in the case of ***Rakesh Mukesh Shah Vs State of Maharashtra***⁴, where it has been held thus:

“5. It is a matter of record that the applicant has been in custody for 3½ years. The offence punishable under Section 420 Indian Penal Code contemplates imprisonment upto seven years. Hence, it is clear that the applicant has served more than half of the sentences.”

“7. It is made clear that this Court has not gone into the merits of the matter and the applicant is being enlarged on bail only under the provisions of Section 436-A of Cr.P.C.”

8. In light of the foregoing discussion, this Court is of the considered view that Section 436A of the Code of Criminal Procedure, 1973 being a statutory provision akin to the provisions of default bail provided under Section 167 of Cr.P.C, aims to safeguard the interests of under-trial accused in custody from the prolonged incarceration. In the present case, it is evident that the accused has

⁴ 2018 SCC OnLine BOM 17551



been in custody for a prolonged period exceeding seven years and has not been released on bail due to the inability to fulfil the bail conditions. It is apparent from the face of records that the accused-petitioner has been in custody for a duration that surpasses half of the maximum sentence prescribed under the charged sections of the Indian Penal Code, 1860, and Section 6 of the Odisha Protection of Interests of Depositors (in Financial Establishments) Act, 2011. Continuing to detain the accused as an undertrial for such an extended period not only contravenes the statutory rights under Section 436A but also infringes the constitutional principles embodied in Article 21 of the Constitution of India, which along with personal liberty also includes the right to a speedy trial as an integral part of the right to life. This Court is also alive to the fact that procedurally the petitioner ought to have moved for modification of the bail condition that has been imposed by this Court while admitting him to bail. Inability to comply such bail condition despite repeated reduction of cash security amount by this Court on the application of the petitioner, itself speaks of the onerous nature of the bail condition. Condition of bail being a



procedural facet of the matter, should not be allowed to prevail upon fundamental right to life and liberty of an accused. Therefore, while reaffirming the constitutional and statutory rights of the petitioner and by giving a go bye to the procedural entanglement, I prefer to allow these petitions.

9. On the conspectus of the above discussion on law and fact, this Court allow all the five petitions and direct the court below to release the petitioner on bail, subject to any condition as deemed fit and proper. It's made clear that this Court has not expressed any view on the merits of the case. In the event the petitioner is found misusing the concession granted to him by this judgment, in any manner whatsoever, on the application of the prosecution, the liberty granted to the petitioner shall be withdrawn by the trial court by giving reasons.

10. Consequently, all the five CRLMCs filed by the petitioner are hereby disposed of.

(S.S. Mishra)
Judge

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Reason: Authentication
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Date: 16-Feb-2025 13:22:48

High Court of Orissa, Cuttack
The 16th of February, 2025/Ashok

