THE HIGH COURT OF ORISSA AT CUTTACK
BLAPL Nos.2010 & 6704 of 2026
CNR Nos. ODHC010143182026 & ODHC010484272026

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

Shyam Sundar … ***Petitioners***
(In BLAPL No. 2010 of 2026)
Romeo Adakatia
(In BLAPL No. 6704 of 2026)

-versus-

State of Odisha … ***Opposite Party***

For Petitioners : ***Mr. S. Manohar, Advocate***
(In BLAPL No.2010 of 2026)
Mr. M. Padhy, Advocate
(In BLAPL No. 6704 of 2026)

For Opposite Party : ***Mr. P. Satpathy, Addl. PP***

CORAM: JUSTICE G. SATAPATHY

DATE OF HEARING & DATE OF JUDGMENT: 31.08.2026 (ORAL)

G. Satapathy, J.

1. These are bail applications U/S.483 of BNSS by the petitioners for grant of bail in connection with Excise Satellite Unit, Jeypore (Koraput) P.R. No. 142 of 2025-26 corresponding to T.R. Case No. 106 of 2025 pending in the file of learned Addl. Sessions Judge-cum-Special Judge, Koraput, for commission of offence punishable U/S.20(b)(ii)(C) of the NDPS Act.

2. Heard Mr. Shyam Manohar, learned counsel for the petitioner in BLAPL No. 2010 of 2026, Mr. Manoranjan Padhy, learned counsel for the petitioner in BLAPL No. 6704 of 2026 and Mr. P. Satpathy, learned Addl. PP in these matters and perused the record.

3. Admittedly, the petitioner-Shyam Sundar has taken the plea of non-compliance of Sec. 58 of BNSS r/w. Article 22(2) of the Constitution of India, but the petitioner- Romeo Adakatia has not taken such plea as ground for grant of bail, but the same being plea of law, can be advanced at any stage of the proceeding for grant of bail and even if, the petitioner- Romeo Adakatia has not taken such plea, this Court considers it proper to examine the non-compliance of these provisions, which stem from the fundamental right of an accused as guaranteed under Article 22(2) of the Constitution of India, which provides that every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate and no such person shall be detained in custody beyond the said

period without the authority of a Magistrate. In this case, the copy of the affidavit filed by the Arresting Officer before the Court in seisin over the matter was produced before this Court and in such affidavit, the Arresting Officer has admittedly stated at paragraph-9 that actually he has got the information at 9.00PM on 23.08.2025, but mistakenly he has mentioned the time 9.00AM in the advanced PR in Form No.C2, however, on a plain perusal of Form No.C2, it is found that the Officer concerned has stated that he got information at 9.8' Clock in the morning and thereafter, he proceeded to detect the case. The word "9.00 O' clock in the morning" and "9.00AM" connote two different descriptions inasmuch as had the authority concerned put time 9.00AM in Form No.C2, it can be considered that the authority concerned has mistakenly put the time 9.00PM instead of 9.00AM, but the mentioning of the word "morning" in Form No.C2 itself denotes that the issue happened in the morning hour and the facts stated in Form No.C2 reveal that the information was received by the concerned authority in the morning hour, while performing patrolling duty and

thereafter, the concerned authority proceeded to the spot and detected the case.

4. Additionally, the copy of memo of arrest of both the petitioners produced before this Court reveal that the date 23.08.2025 mentioned therein has been overwritten and it has been made to 24.08.2025 in Column No.5 & 6 of the arrest memos, but again the Column No.9 of such arrest memos bear the signature of the OIC of Excise with date 23.08.2025 beneath thereon. No doubt the authority concerned has tried to fill up the lacuna by stating that the petitioners were arrested at 1.50AM and 2.00AM on 24.08.2025, but the petitioners were apprehended much prior to the aforesaid time, since the advanced PR in Form No.C2 reveals that the OIC of Excise while performing patrolling duty on 23.08.2025, at 9.00 o' Clock in the morning received information about illegal transportation of Contraband article and he immediately thereafter informing the authority proceeded to the spot and detected the case by apprehending the petitioners- Romeo Adakatia and Shyam Sundar while they were allegedly transferring Contraband article from Alto car to TATA Signa container. Further, this

Court has also sought for certain instruction from the concerned OIC of Excise and accordingly, it is stated in the information furnished to this Court that the Contraband article was deposited in Court Malkhana on 25.08.2025. No doubt, the OIC of Excise has made endeavour to rectify his mistake by stating that mistakenly he has mentioned the time at 9.00AM instead of 9.00PM, but even though the learned Additional Sessions Judge-cum-Special Judge, Koraput is so simple to accept such explanation of the OIC of Excise, this Court is firmly believed that the petitioners were not detained at 1.50AM and 2.00AM on 24.08.2025, rather they had been detained much prior to such time and probably they must have been detained immediate after 9.00AM in the morning and might be within one hour thereafter, but the petitioners were produced at the Res. Office of the learned Additional Sessions Judge-cum-Special Judge, Koraput at 7.30PM on 24.08.2025.

5. One ground may also be considered that the time of 24 hours is exclusive of the time necessary for journey for the purpose of calculating 24 hours, but in this case, the spot of occurrence being 80KMs. from Jeypore and if the

accused were detained in custody at 10.00AM on 23.08.2025 in the morning, the 24hours would be completed at 10AM on 24.08.2025 and adding another 3 hours time necessary for journey, it would be around 1.00P.M. on 24.08.2025, but the petitioners were admittedly produced at 7.30PM at the Res. Office of the learned Additional Sessions Judge-cum-Special Judge, Koraput which is beyond 24 hours. The Excise Official albeit has shown the accused-petitioners to have been arrested at 1.50AM and 2.00AM on 24.08.2025, but their custody will begin on and from 10.00AM on 23.08.2025 for the purpose of Sec.58 of BNSS. What is significant is that arrest has not been defined either in BNSS or in any statute, but how arrest is made has been provided in Sec.43(1) of BNSS and it is stated therein that in making an arrest, the police officer or other person effecting arrest shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action. It is, therefore, plain and simple that if the Officer arresting the person touches or confines the later, it can be said that the later (accused person) is arrested. It is equally true that "custody" and "arrest" are not synonymous and in

every arrest, there must be custody, but not vice versa, since a person in custody may not be under arrest. Further, the custody means physical surrender of the person and even if a person is not arrested, he can surrender in the Court, but one thing is very clear that during custody in a criminal matter, the person arrested is considered to be in duress. Accordingly, if a person is either arrested or confined in custody of a law enforcing agency, he is under duress. Protection of life and personal liberty of a person is the fundamental right of such person and Article 22(2) of the Constitution of India provides that a person cannot be detained in custody without being produced before a Magistrate within 24 hours exclusive the time necessary for journey, but if such person is detained in custody beyond 24hours of after his arrest without the authority of a magistrate, such arrest would not only be illegal, but would also be vitiated. Once arrest is vitiated, the subsequent remand of such person stands vitiated.

6. In this case, on a conspectus of the materials placed on record, especially when the petitioners were produced before the Court beyond 24 hours exclusive of the time

necessary for journey from the place of arrest to the Court, not only the arrest of the petitioners stands vitiated, but also their subsequent remand in this case. In such situation, the only inevitable consequence is to grant bail to the petitioners because their arrest and remand are vitiated.

7. In the result, these two bail applications of the petitioners namely Shyam Sundar (BLAPL No. 2010 of 2026) and Romeo Adakatia (BLAPL No. 6704 of 2026) stand allowed and each of the petitioners is allowed to go on bail on furnishing bail bonds of Rs.1,00,000/- (Rupees One Lakh) 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.

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

Signature Not Verified
Digitally Signed
Signed by: PRIYAJIT SAHOO
Designation: Sr. Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA
Date: 31-Aug-2026 19:36:07

(G. Satapathy)
Judge

Orissa High Court, Cuttack,
Dated the 31st day of August, 2026/S.Sasmal