



IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL NO.6805 of 2025

(In the matter of application under Section 439 of CrPC, 1973).

1. Susanta Kumar Dhalasamanta ... Petitioners
2. Susil Kumar Dhalsamanta

-versus-

State of Odisha ... Opposite Party

**For Petitioners : Mr. C.Samantaray, Mr.S.K.Patra
& Mr.S.Biswal, Advocates**

For Opposite Party : Mr. P.S.Nayak, Special Counsel

CORAM:

JUSTICE G. SATAPATHY

DATE OF HEARING & JUDGMENT:29.01.2026(ORAL)

G. Satapathy, J.

1. This is an application U/S.439 of the Code of Criminal Procedure(in short, "CrPC") by the petitioners for grant of bail in connection with Markat Nagar PS Case No.229 of 2020 corresponding to G.R.Case No.1572 of 2020 pending in the file of learned 2nd Additional Sessions Judge, Cuttack, for commission of offences punishable U/Ss.386/387/120-B of Indian Penal Code read with Sections 25(1-A)/25(1-AA)/25(1-



B) of Arms Act, on the main allegation of demanding extortion money and possessing unauthorized firearms and live ammunition in their house.

2. In the course of hearing, Mr. Chandan Samanataray, learned counsel for the petitioners submits that although the petitioners have been made as accused persons in this case, but the seizure was made in Choudwar P.S. Case No.594 of 2020, and therefore, the present case registered against the present petitioners is not maintainable. Mr. Samantaray by relying upon the forensic report further submits that even at the worst, the weapon seized in this case being not unauthorized weapon, the offences prescribed under Section 25(1-AA) of Arms Act is not attracted against the petitioners and the petitioners having already been detained in custody for a substantial period of ten years may kindly be granted bail.

3. On the other hand, Mr. Partha Sarathi Nayak, learned special counsel engaged in this case opposes the bail application of the petitioners by contending, inter alia that the petitioners are not only the history-



sheeters, but also they have got past convictions. Mr. Nayak further submits that the punishment prescribed for the offence under Section 25(1-AA) of Arms Act is not less than 10 years, but may extend up to imprisonment for life, however, the present petitioners being convicted for Arms Act, their punishment may be doubled on conviction in this case for the offences under Arms Act in view of the provision of Section 31 of the Arms Act, and therefore, the bail application of the petitioners may kindly be rejected.

4. After having considered the rival submissions upon perusal of the records, there appears allegation against the petitioners for possessing arms and live ammunitions and the certified copy of the depositions of witnesses P.Ws.3 & 5, who are the police personnel as supplied by learned counsel for the petitioners reveal about the aforesaid two witnesses deposing against the petitioners by supporting the prosecution allegation. Further, it is not in dispute that petitioner no.1-Susanta Kumar Dhalasamanta has been convicted in two criminal cases and is accordingly sentenced to undergo



imprisonment for seven years in one criminal case and imprisonment for five years in another criminal case. Similarly, the comprehensive affidavit filed by petitioner no.2-Susil Kumar Dhalasamanta reveals about his conviction in one criminal case with sentence to undergo imprisonment for seven years therein. Besides, there are series of criminal antecedents reported against the petitioners. What should be the consideration for grant bail has been elucidated in a plethora of decisions, but in addition to such factors for consideration of bail application, the criminal antecedents of an accused cannot be brushed lightly as it has got definite impact on the society. In this regard, this Court is fortified with the decision of the Apex Court in ***Neeru Yadav vrs- State of Utter Pradesh & another; (2014) 16 SCC 508***, wherein at Paragraph-17, it has been held as follows:-

*“17. Coming to the case at hand, it is found that when a stand was taken that the 2nd respondent was a **history-sheeter**, it was imperative on the part of the High Court to scrutinize every aspect and not capriciously record that the 2nd respondent is entitled to be admitted to bail on the ground of parity. It can*



*be stated with absolute certitude that it was not a case of parity and, therefore, the impugned order clearly exposes the non- application of mind. That apart, as a matter of fact it has been brought on record that the 2nd respondent has been charge sheeted in respect of **number of other heinous offences**. The High Court has failed to take note of the same. Therefore, the order has to pave the path of extinction, for its approval by this court would tantamount to travesty of justice, and accordingly we set it aside."*

5. Further, Section 480(1)(ii) of BNSS prescribes that such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or **imprisonment for seven years or more**, or he had been previously **convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years** or more but less than seven years : provided further that the Court may also direct such person referred to above be released on bail, if it is satisfied that it is just and proper so to do for any other special reason.



Additionally, it is also not disputed that the petitioners have already been convicted for Arms Act, but Section 31 of the Arms Act, 1959 prescribes punishment for subsequent offences in following words,

*"31. Punishment for subsequent offences- Whoever having been convicted of an offence under this Act is again convicted of an offence under this Act shall be punishable with **double the penalty** provided for the latter offence."*

6. Section 25(1-AA) of Arms Act provides punishment, which shall not be less than ten years but may extend to imprisonment for life and shall also be liable for fine. In this Case, the petitioners are facing trial for the offence under Section 25(1-AA) of Arms Act. It is, however, contended by the learned counsel for the petitioners that Section 25(1-AA) of Arms Act is not made out against the petitioners, but such plea has to be decided by the learned trial Court after evidence is being led. In a bail proceeding, this Court does not consider it advisable or desirable to accept such plea at this stage to say that the offence under Section 25(1-AA) of Arms Act is not made out. The only consideration in granting or refusing bail is dependent



upon existence of prima facie case or not, but after going through the materials placed on record together with the evidence of the witnesses as produced, this Court does not consider it proper to opine that the offence under Section 25(1-AA) of Arms Act is not made out against the petitioners.

7. Further, the length of custody has been advanced as a plea for grant of bail, but this Court is fortified with a decision of the Apex Court in ***State of Bihar and another Vrs. Amit Kumar @ Bachcha Rai; (2017) 13 SCC 751*** wherein it has been held in paragraph-8 as under:-

*“8. Xxx xxx xxx When the seriousness of the offence is such, **the mere fact that he was in jail for however long time should not be the concern of the courts.** We are not able to appreciate such a casual approach while granting bail in a case which has the effect of undermining the trust of people in the integrity of the education system in the State of Bihar.”*

8. In view of the above facts and after having considered the rival submissions and on going through the materials placed on record together with the undisputed fact of previous convictions of the



petitioners for offences under Arms Act and other offences and they having sentenced to undergo imprisonment for seven years on the backdrop of the petitioners having chequered criminal history, this Court is not inclined to grant bail to the petitioners.

9. Hence, the bail application of the petitioners stand rejected. Accordingly, the BLAPL stands disposed of.

(G. Satapathy)
Judge

*Orissa High Court, Cuttack,
Dated the 29th day of January, 2026/Manoj*