

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.21006 of 2020**

Arising Out of PS. Case No.-139 Year-2016 Thana- RUPASPUR District- Patna

Md. Neshleuddin @ Neshle @ Sonu @ Neshle Miya @ Neshleuddin, Son of Rafiz Khan @ Jafir Mistry @ Jafir, at Present Resident of - C/o Ashok Ram, Durga Sthan, Shekhpura More, P.S.- Airport, Distt.- Patna. Permanent Resident of Village - Chand Patti, P.S.- Sursand, Distt.- Sitamarhi (Bihar).

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr.Ravi Bhushan, Advocate

For the Opposite Party/s : Mr.Abhay Kumar Roy, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

3 03-07-2020 Learned counsel for the petitioner undertakes to remove the defects within three weeks after start of normal functioning of the Court.

Heard learned counsel for the petitioner and learned A.P.P. for the State.

Petitioner in the present case is seeking regular bail in connection with Rupaspur P.S. Case No. 139 of 2016 corresponding to Special Case No. 5125 of 2018 registered for the offences punishable under Sections 399, 402 and 414 of the Indian Penal Code and 25(1-b)a, 26 & 35 of the Arms Act and 47 of the Bihar Prohibition and Excise Act.

Earlier the prayer for bail of the petitioner was



rejected firstly on 20.09.2018 with an observation that in case the trial is not expedited and is not concluded within next six months petitioner may renew his prayer for bail. This Court had noticed that the petitioner is said to be in custody since 15.07.2016 in connection with this case. In the second attempt also the petitioner could not succeed as this Court vide its order dated 30.08.2019 passed in Cr. Misc. No. 22426 of 2019 refused to grant bail to the petitioner after looking into the report of the learned Special Judge, Excise, Patna who had informed this Court that the trial is likely to be concluded in about 10 months time. While refusing to grant bail in the second attempt this Court directed the Public Prosecutor as well as the Senior Superintendent of Police, Patna to ensure that the witnesses are produced in the case on the date fixed in the matter and the trial court should not adjourn the matter giving longer date.

On the last date, this Court had called for a fresh report both from the learned court below as well as from the office of the Senior Superintendent of Police, Patna. Letter No. 114/2020 dated 1st July, 2020 received from the learned Special Judge, Excise, Patna reveals in no unambiguous term that the prosecution has not taken any interest in producing the witnesses on the date fixed in the matter. The Jail



Superintendent, Beur was even warned orally by the learned trial court on three dates when he did not produce the petitioner from jail and when an explanation issued by the learned trial court to the Jail Superintendent on 17.12.2019 failed to fetch any response from him, the learned trial court has issued a show cause notice for not producing the accused. One prosecution witness was brought on 08.01.2020 who was partially examined but the examination was not complete. On the date fixed for further examination on 23.01.2020 and thereafter on 28.01.2020 the prosecution witness did not appear. Thereafter, he appeared on 10.02.2020, he was further examined and lastly his cross-examination was completed on 04.03.2020, thereafter due to prevailing pandemic COVID-19, the court is not functioning physically on regular basis and therefore the learned trial court has reported to this Court that the court can conduct the trial in reference case on day to day basis provided the State authorities, counsel for the prosecution and counsel for the accused are ready to co-operate but all these can happen only after resumption of normal court working once the situation due to COVID-19 pandemic is over.

The report from the office of Senior Superintendent of Police, Patna simply states that eight Police officials are



witnesses in this case and they are on transfer from Patna district to other districts. In this regard after the order of this Court, letters seems to have been written on 01.07.2020 to the concerned Superintendent of Police, Banka, Jehanabad and Katihar district and all of them have been requested to inform/direct the police official witnesses to be present on the date fixed in the matter.

This is the manner in which the direction of this Court to the Public Prosecutor and the Senior Superintendent of Police, Patna to ensure presence of the witnesses have been carried out. The petitioner has remained in custody for almost four years in connection with this case. In the meantime, co-accused have already been granted regular bail and in the cases stated in paragraph '3' of the application a statement has been made that the petitioner has been granted bail in all the three cases.

In the aforesaid facts and circumstances of the case finding that the petitioner has remained in custody for four years and the trial is not likely to be concluded in near future, the continuation of the petitioner in jail is not likely to come in aid of investigation or help the prosecution and there being no submission that the release of the petitioner is in any way at this



stage likely to adversely affect the course of trial, let the petitioner above named be released on bail in connection with Rupaspur P.S. Case No. 139 of 2016 corresponding to Special Case No. 5125 of 2018 on furnishing of bail bond of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge, Excise, Patna, subject to the condition as laid down under Section 437 (3) Cr.P.C. as under :

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

And further condition that in case the petitioner is found involved in any offence of like nature in future it will be open for the Investigating Officer and the learned trial court to take steps for cancellation of bail bond of the petitioner.



And further condition that the petitioner shall appear in course of trial on each and every date in the matter and failure to appear will attract action towards cancellation of bail bond.

And further condition that he will abide by and observe the guidelines and directives of the Government of India and the State Government with regard to COVID-19 Pandemic during the lockdown period. The authorities concerned shall take appropriate steps to ensure such observance prior to and after release of the petitioner.

Let a copy of this order be sent to the Director General of Police, Bihar, Patna just to remind him that what was discussed in the Adhiweshan Bhawan at Patna on 15th of December, 2017 in presence of August gathering and an anxiety was expressed on behalf of the State on the lower rate of conviction in the State over the period, has all proved futile and if the Officers of the State like Jail Superintendent and other official witnesses are the reasons for delaying the trial, the State would not be able to improve the conviction rate and justice to victims of crime. All such Seminars and Symposium and discussions of like nature would be an exercise in futile.

Let a copy of this order be also sent to the Senior Superintendent of Police, Patna.



Application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

vats/-

U		T	
---	--	---	--

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

