

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.85339 of 2019**

Arising Out of PS. Case No.-14 Year-2017 Thana- D.R.I District- Patna

MD. NAFEES Son of Late Haji Moharram Ali @ Md Late Moharram Ali
Resident of House No. 642, Panigaon, P.S.- Indra Nagar, District- Lucknow
(U.P.)

... .. Petitioner

Versus

THE UNION OF INDIA THROUGH THE DRI REGIONAL UNIT, PATNA
Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr.Sanjeev Ranjan, Advocate
For the Opposite Party/s : Mr.S.D.Sanjay, ASG

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 28-05-2020 This application has been placed for consideration by the
order of the Hon'ble the Chief Justice through virtual court
proceeding.

Heard, Mr. Sanjeev Ranjan, learned counsel for the
petitioner and Mr. S.D. Sanjay, learned ASG of India for the
Union of India with Mr. Manoj Kumar learned counsel assisting
Mr. S.D. Sanjay.

Petitioner in this case has taken this third attempt to
get bail in connection with Complaint Case No. 14 of 2017
registered under Sections 21, 23, 25 and 29 of the Narcotic
Drugs & Psychotropic Substances Act, 1985 (hereinafter
referred to as the 'NDPS Act') corresponding to Special Case
No. 128 of 2017.



Earlier the prayer for bail of petitioner was rejected by learned Coordinate Bench of this Court firstly on 16.05.2018 in Cri. Misc. Case No. 27719 of 2018 and thereafter on 07.08.2019 in Cri. Misc. Case No. 38721 of 2019.

Learned Coordinate Bench has while rejecting the prayer for bail of the petitioner in it's order dated 16.05.2018 took note of the submissions on behalf of the Union of India that besides the confessional statement of the co-accused there are other cogent materials which establish that the petitioner happens to be the main accused to whom the consignment of heroine was to be delivered. The market value of the heroine comes to more than Rs.18 crores.

In the subsequent order dated 07.08.2019, when the learned Coordinate Bench was informed that the Khalasi of the truck who has apprehended along with driver and owner of the truck with the heroine has been granted bail in Cri. Misc. Case No. 7069 of 2019, therefore the petitioner should also be granted bail, the learned Coordinate Bench rejected his prayer and directed the learned court below as well as the prosecution to take all steps so that the case may come to it's logical end without unnecessary delay. The prosecution was directed to produce witnesses as and when required by the learned trial court.

Mr. Sanjeev Ranjan, learned counsel representing the



petitioner submits that save and except the confessional statement of the co-accused, there is no material against the petitioner. Learned counsel further submits that only yesterday the driver of the truck has also been granted bail by a learned Coordinate Bench of this Court in Cri. Misc. Case No. 71524 of 2019. Parity has been sought to be drawn between the driver and Khalasi on the one hand and this petitioner on the other hand, a prayer has been made that now the petitioner also deserve the privilege of regular bail. Learned counsel has also relied upon the judgment of the Hon'ble Supreme Court in the case of **Surindra Kumar Khanna versus Intelligence Officer Directorate of Revenue** reported in **(2018) 8 SCC 271**

It is his submission that the Hon'ble Supreme Court has held that there cannot be any conviction on the basis of the confessional statement alone. Learned counsel has further informed that till date no witness has been examined on behalf of the prosecution in course of trial and the petitioner has remained in custody for almost three years.

On the other hand, learned Additional Solicitor General of India has opposed the prayer for regular bail of the petitioner. It is submitted that this Court may not like to go into the merit of the contentions of the petitioner at this stage when



on earlier two occasions the learned Coordinate Bench of this Court has rejected the prayer for bail of the petitioner after considering the merit of the case.

It is submitted that when the petitioner sought to argue that the Khalasi has been granted bail and, therefore he should also get the same, the learned Coordinate Bench rejected the said prayer, thus, there will be no difference if driver has been granted bail at this stage by another learned Coordinate Bench of this Court.

Mr. S.D. Sanjay, learned ASG of India has taken this Court through the statement of the owner of the truck who has in various paragraphs stated that he was working with this petitioner and was involved in smuggling of heroine to make money at the instance of this petitioner. The consignment was also meant for this petitioner and earlier some delivery had been made to him. It is submitted that the statement of the owner being self-incriminating statements, it cannot be said that the owners statement has no evidenciary value, moreover the evidenciary value of the owner's statement shall be looked into in course of trial. It is, thus, his stand that the grant of bail to the driver is not a circumstance which would go in favour of the petitioner.



Having considered the rival submissions at the Bar and the materials available on the record, this Court finds that earlier the prayer for bail of the petitioner has been rejected twice by learned Coordinate Bench of this Court. Reasons have been assigned therein referring to the submissions of the learned Additional Solicitor General that there are cogent materials against this petitioner to connect him with the present case. In such circumstance this Court would not go for review on the merit of the case and the contentions which are being raised by learned counsel for the petitioner on the merit cannot be gone into.

This Court agrees with the submission of learned counsel for Union of India that grant of bail to the driver alone cannot be a changed circumstance and the same cannot result in any benefit to this petitioner. The owner of the vehicle is still in judicial custody.

This Court is therefore, not inclined to grant bail to the petitioner. The prayer is refused but while parting with the brief this Court would remind the learned trial court to take note of the directions of the learned Coordinate Bench which has been noted hereinabove and proceed with the trial of the case without loosing further time. The prosecution shall also take all



steps to produce the witnesses as and when called upon to do so
by the learned trial court. Let the trial be concluded preferably
within a period of nine months from today.

This application is disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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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'.

