

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.3826 of 2021**

Arising Out of PS. Case No.-106 Year-2000 Thana- CHOUTARWA District- West
Champaran

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Chuman Yadav, Son of Late Indradeo Yadav, Resident of Village- Bagahwa
Tar, P.S.- Dhanha, District- West Champaran.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

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Appearance :

For the Petitioner	:	Mr. Ravi Nandan Sahay, Advocate Mr. Vijay Kr Singh No. 1, Advocate
For the Opposite Party/s :		Mr. Lalit Kishore, A.G. Mr. Ataur Rahman, A.P.P.

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

6 07-04-2021 Heard learned counsel for the petitioner and learned
Advocate General for the State of Bihar.

The learned Advocate General had to appear in this
matter for the reasons which may be found in the court's order
dated 03.02.2021, 03.03.2021 and 05.04.2021 which are
extracted hereunder for a ready reference:-

“Heard learned counsel for the petitioner and Mr.
Md. Ataur Rahman, learned APP for the State.

This is the second attempt of the petitioner seeking
regular bail in connection with Chautarwa P.S. Case
No. 106 of 2000 registered for the offences punishable
under Sections 302/34 of the Indian Penal Code and
Section 27(1) of the Arms Act.

Earlier the prayer for bail of the petitioner was
rejected by this Court vide order dated 20.11.2019
passed in Cri. Misc. No. 52120 of 2019. At the relevant
time, this Court had taken into consideration the fact
that the case is of the year 2000 and the petitioner had
been taken on remand in this case with effect from
06.11.2013.



Learned counsel for the petitioner submits that since the date of rejection of the prayer for bail no progress has been made in the trial and the same is not likely to be concluded in near future.

At this stage, learned counsel has placed before this Court that from the FIR itself it would appear that the petitioner had himself surrendered along with the other co-accused pursuant to Amnesty Scheme of the Government and the purpose of surrender was to join the mainstream of the society.

Learned counsel submits that in fact similarly situated accused who had surrendered to take benefit of the scheme of the Government have been granted privilege of bail by a learned Co-ordinate Bench of this Court. In this connection web copy of the order dated 02.08.2010 passed in Cri. Misc. No.32622 of 2009 (Basudeo Yadav @ Tiwari versus State of Bihar), order dated 07.01.2010 passed in Cri. Misc. No. 1322 of 2009 (Awadesh Yadav versus State of Bihar), order dated 01.12.2009 passed in Cri. Misc. No. 34284 of 2009 (Awadesh Yadav versus State of Bihar) and order dated 05.03.2010 in Cri. Misc. No.7380 of 2010 have been placed before this Court. It is stated that against the accused Basudeo Yadav @ Tiwari there were around 106 cases but considering the fact that he had surrendered under the scheme with an intention to join the mainstream of the society, the learned Co-ordinate Bench of this Court had granted him bail.

In the given facts and circumstances of the case, let the Additional Chief Secretary/Principal Secretary, Department of Home, Government of Bihar be made party as O.P.No. 2. Mr. Md. Ataur Rahman, learned APP for the State accepts notice on his behalf.

Let a counter affidavit containing a stand of O.P. No. 2 be placed before this Court within three weeks from today.

In the meantime, call for a report from the court of learned 1st Additional Sessions Judge, Bagaha, District-West Champaran as to what steps have been taken after previous order of this Court, what is the present stage of S.Tr. No. 94 of 2014 and the time likely to be taken in conclusion thereof.

List this case on 1st March, 2021.

Let a copy of this order be sent to the Additional Chief Secretary/Principal Secretary, Department of



Home, Government of Bihar through FAX to file an affidavit.”

Order dated 03.03.2021

“Though the counter affidavit has been filed on behalf of O.P. No. 2, this Court does not find the same satisfactory.

The specific submission of learned counsel for the petitioner is that the petitioner had surrendered along with other co-accused pursuant to the Amnesty Scheme of the Government and the purpose of surrender was to bring them in the mainstream of the society. He has been remanded in the present case on 06.11.2013.

In the counter affidavit though the O.P. No. 2 has come out with the statement in paragraph ‘10’ that under the policy of rehabilitation of such criminals who surrender with arms, the case of this petitioner was also considered and rehabilitation scheme has been suggested and then in paragraph ‘11’ it is stated that the petitioner has been paid a sum of Rs.95,554/- by order of the Director General of Police, surprisingly in paragraph ‘12’ no stand has been taken as regards the submission of learned counsel for the petitioner that similarly situated accused who had surrendered under the scheme has been granted benefit of privilege of bail by a learned Co-ordinate Bench of this Court.

The O.P. No. 2 had to take a plea as to whether the case of the petitioner stands on similar footing with the other accused who has been granted privilege of bail.

Learned counsel for the petitioner has informed this Court that out of 49 cases against him, in 27 cases he has already been acquitted and so far as the present case is concerned, the report of learned trial court shows that out of 11 witnesses 10 have already been examined but after passing of the order by this Court on 20.11.2019 in Cri. Misc. No. 52120 of 2019, the prosecution has not produced any witness.

Let a short affidavit be filed on behalf of O.P. No. 2 taking a stand as to whether the case of this petitioner stands on similar footing with that of those who have got benefit of the scheme and has been enlarged on bail by a learned Co-ordinate Bench of this Court.



Let such affidavit be filed by 17th March, 2021.
List the matter on 22nd March, 2021.”

Order dated 05.04.2021

“On the last date, when the matter was called out, the learned Advocate General was present in court in connection with some other case. Finding the nature of the present case being such that it requires appearance of the learned Advocate General, this Court had requested him to represent the State and make the Court acquainted completely with the Amnesty Scheme as also whether the case of the petitioner stands on similar footing with that of those who have been granted bail by learned coordinate Bench of this Court.

Since the learned Advocate General is not present in the virtual hearing today, let this case be listed for hearing in physical mode tomorrow.”

Today learned Advocate General has informed this Court that under the Amnesty Scheme there were three benefits which were allowed to the accused persons who surrendered under the said Scheme. Those are (1) a monetary compensation (2) speedy trial of the cases and (3) legal aid.

So far as the present petitioner is concerned, he has already received the monetary compensation. The petitioner has not applied for legal aid, therefore, the State has not provided any legal aid to the petitioner but as and when required he may make a request to the State to provide legal aid and on receipt of such request the State shall provide legal assistance to the petitioner.

As regards speedy trial of the present case, this Court



has been informed that in fact the prosecution evidence is at the fag end. Now only two witnesses are required to be examined, one of them is the investigating officer of the case.

Learned Advocate General has assured this Court that on the next date fixed in the matter the Investigating Officer of the case shall be produced and in this connection he would issue necessary instructions/directions to the local prosecuting officer and will discuss the matter with the Superintendent of Police, Bagaha.

As regards one of the witness namely, Dashrath Yadav, it is stated that he is incarceration in Deoria Jail (Uttar Pradesh). Learned Advocate General submits that the prosecution would take efforts to produce the said witness in the present case but at the same time assures this Court that in the name of production of the said witness the prosecution will not linger the matter.

It is submitted that within two dates fixed by the learned trial court if the said witness Dashrath Yadav is not produced, the learned trial court may consider closing the evidence of the prosecution and proceed with the trial. This statement has been made in order to ensure that the concept of speedy trial as indicated in the Amnesty Scheme is fully adhered



to.

Further learned Advocate General as attempted to distinguish the case of the present petitioner with those who have been granted bail by learned coordinate Bench of this Court. It is his submission that in the present case the petitioner is facing a large number of cases and all those are of heinous nature, so far as the present case is concerned, the trial is at the fag end, therefore, this Court may while exercising its discretion consider this aspect of the matter.

Having regard to the facts and circumstances of the case, considering that the trial in this case is at the fag end and now the learned Advocate General has made categorical statements giving an impression to this Court that the prosecution would produce their witnesses within a reasonable time, this Court is not inclined to grant bail to the petitioner at this stage.

Instead, the trial court is expected to proceed with the trial granting a reasonable opportunity to the prosecution which will not be for a period of more than three months to produce all the remaining witnesses including the official witnesses. If the prosecution fails to produce the remaining witnesses within the said period, in terms of the assurance given to this Court by



learned Advocate General, the trial court shall proceed to consider closure of evidence of the prosecution and to proceed further towards conclusion of trial preferably within a period of five months from today.

If the trial is not concluded within a period of five months from today for no reason attributable to the petitioner, it will be open for the petitioner to make an application in the learned trial court itself praying for release on bail.

This application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/-

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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'.

