

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39550 of 2020

Arising Out of PS. Case No.-81 Year-2014 Thana- DUMARIAGHAT District- East
Champaran

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Ram Bali Mukhiya @ Bali Mukhiya , aged about 40 years, male, son of
Sohrai Mukhiya, resident of village-Hasuaha, PS Motihari, Mufassil, District
East Champaran.

... .. Petitioner

Versus

The State of Bihar

... .. Opp.Party

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Appearance :

For the Petitioner	:	Mr. Krishna Kant Singh, Advocates
For the State	:	Mr. Akshay Lal Pandit, APP

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

10. 19-05-2021 In view of the sudden resurgence of Covid-19 infection,
there is limited functioning of the High Court and, therefore, the
matter has been listed today for consideration through virtual
mode.

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

The petitioner seeks bail in Dumaria Ghat PS Case No.81
of 2014, NDPS Case No.49 of 2014, instituted for the offence
under Sections 414/34 of the Indian Penal Code and 20/22/23 of
the Narcotic Drugs and Psychotropic Substances Act, 1985 (for
brevity “NDPS Act”).

Learned counsel for the petitioner is expected to honour
his undertaking given in the instant case for depositing the
requisite court fee and to remove the defects as pointed out by
office when called upon to do so by the office.

Twice, the petitioner’s prayer for bail has been rejected;
once under order date 05.02.2016 passed in Cr. Misc. No. 49648
of 2015, thereafter, on 22.06.2020 in Cr. Misc. No. 85402 of



2019.

The prosecution case is that the Station House Officer (for brevity 'SHO') on 29.07.2014 was on duty and received confidential information regarding smuggling of contraband 'Charas' from Nepal. He laid a trap. Seeing the police party, four persons carrying basket in their hand and two persons on motorcycle fled away. They were apprehended after a chase. Altogether 45 kg 'Charas' was recovered. From the petitioner's possession 11.5 kg 'Charas' has been recovered. The quantity allegedly recovered, is much more than commercial quantity.

The learned counsel for the petitioner denies and disputes the allegations. He submits that the mandatory procedure for search seizure prescribed under the NDPS Act has not been complied with. The petitioner has now remained in custody since 29.07.2014, for nearly seven years. It is his submissions that continued incarceration of the petitioner due to failure of the prosecution in concluding the trial offends section 309 of the Code of Criminal Procedure as well as Articles 14, 19 and 21 of the Constitution of India. Having regard to the fact that this is his first offence, and that he is in custody for nearly seven years, this Court should allow the prayer for bail.

In support of his submissions, he has relied upon the decision of the Apex Court in the case of ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners vs. Union of India and Another*** reported in ***(1994)6 SCC 731***.

The further submission is that on the last occasion when the petitioner's prayer for bail was rejected on 22.06.2020, this Court had expressed an expectation that the learned Trial Court would conclude the trial within a period of two months after resumption of the physical Court. Physical Court proceedings



thereafter resumed and continued for considerable time. Only recently, about a month back the physical functioning has again been limited having regard to the resurgence of Covid-19 pandemic. Still the trial has not been concluded and the petitioner continues to be in custody.

The learned APP, representing the State, referring to Section 37 of the NDPS Act has appeared and submitted that unless this Court comes to a finding for the purposes of grant of bail that offence is not made out, the petitioner would not be entitled to the privilege of bail. He, however, does not dispute the legal submissions of the petitioner's counsel based on judgment of the Apex Court. Judgements of the Apex court in the case of *Supreme Court Legal Aid Committee (Supra)* relied upon by the petitioner has considered the issue regarding grant of bail to under trials facing prosecution under NDPS Act, keeping in background, the statutory bar on grant of bail in section 37.

The Apex Court considered the mandate and requirement of speedy trial in terms of Section 36 of the NDPS Act, Section 309 of the Code of Criminal Procedure and the Constitutional guarantee to fundamental rights under Articles 14,19 and 21 of the Constitution of India. In light of these statutory and Constitutional provisions, apex court has observed that incidental deprivation of personal liberty suffered by an arrested accused cannot be indefinite. It must be accompanied by speedy trial and a procedure which is fair, just, and reasonable, even if accused is in custody for alleged offence/s under the NDPS Act.

Having considered the issue in its totality, the Apex Court has issued certain directions in paragraph 15 of the judgement regarding grant of bail to an under trial, accused of the offences



under the NDPS Act. Directions have been passed taking note of the long pendency of trials under the NDPS Act in spite of establishment of Special Courts in the State of Maharashtra. The directions, however, are subject to conditions specified by the hon'ble Supreme Court in the judgement. This Court considers it useful to quote the directions, and general terms and conditions laid down by the Apex Court in paragraph 15 and 16 of the judgement, relevant extract of which reads as follows:

“....We were told by the learned Counsel for the State of Maharashtra that additional Special Courts have since been constituted but having regard to the large pendency of such cases in the State we are afraid this is not likely to make a significant dent in the huge pile of such cases. We, therefore, direct as under:

(i) Where the undertrial is accused of an offence(s) under the Act prescribing a punishment of imprisonment of five years or less and fine, such an undertrial shall be released on bail if he has been in jail for a period which is not less than half the punishment provided for the offence with which he is charged and where he is charged with more than one offence, the offence providing the highest punishment. If the offence with which he is charged prescribes the maximum fine, the bail amount shall be 50% of the said amount with two sureties for like amount. If the maximum fine is not prescribed bail shall be to the satisfaction of the concerned Special Judge with two sureties for like amount.

(ii) Where the undertrial accused is charged with an offence(s) under the Act providing for punishment exceeding five years and fine, such an undertrial shall be released on bail on the term set out in (i) above provided that his bail amount shall in no case be less than Rs. 50,000 with two sureties for like amount.

(iii) Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released



on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.

(iv) Where an undertrial accused is charged for the commission of an offence punishable under [Sections 31](#) and [31A](#) of the Act, such an undertrial shall not be entitled to be released on bail by virtue of this order.

The directives in Clauses (i), (ii) and (iii) above shall be subject to the following general conditions:

(i) the undertrial accused entitled to be released on bail shall deposit his passport with the learned Judge of the Special Court concerned and if he does not hold a passport he shall file an affidavit to that effect in the form that may be prescribed by the learned Special Judge. In the latter case the learned Special Judge will, if he has reason to doubt the accuracy of the statement, write to the Passport Officer concerned to verify the statement and the Passport Officer shall verify his record and send a reply within three weeks. If he fails to reply within the said time, the learned Special Judge will be entitled to act on the statement of the undertrial accused;

(ii) the undertrial accused shall on being released on bail present himself at the police station which has prosecuted him at least once in a month in the case of those covered under Clause (i), once in a fortnight in the case of those covered under Clause (ii) and once in a week in the case of those covered by Clause (iii), unless leave of absence is obtained in advance from the Special Judge concerned;

(iii) the benefit of the direction in Clauses (ii) and (iii) shall not be available to those accused persons who are, in the opinion of the learned Special Judge, for reasons to be stated in writing, likely to tamper with evidence or influence the prosecution witnesses;

(iv) in the case of undertrial accused who are foreigners, the Special Judge shall, besides impounding their passports, insist on a certificate of



assurance from the Embassy/High Commission of the country to which the foreigner-accused belongs, that the said accused shall not leave the country and shall appear before the Special Court as and when required;

(v) the undertrial accused shall not leave the area in relation to which the Special Court is constituted except with the permission of the learned Special Judge ;

(vi) the undertrial accused may furnish bail by depositing cash equal to the bail amount;

(vii) the Special Judge will be at liberty to cancel bail if any of the above conditions are violated or a cases for cancellation of bail is otherwise made out; and

(viii) after the release of the undertrial accused pursuant to this order, the cases of those undertrials who have not been released and are in jail will be accorded priority and the Special Court will proceed with them as provided in Section 309 of the Code.

16. We may state that the above are intended to operate as one time directions for cases in which the accused persons are in jail and their trial are delayed. They are not intended to interfere with the Special Court's power to grant bail under [Section 37](#) of the Act. The Special Court will be free to exercise that power keeping in view the complaint of inordinate delay in the disposal of the pending cases. The Special Court will, notwithstanding the directions, be free to cancel bail if the accused is found to be misusing it and grounds for cancellation of bail exist. Lastly, we grant liberty to apply in case of any difficulty in the implementation of this order."

Directions issued in the case of *Supreme Court Legal Aid Committee (Supra)* was made applicable to the State of Bihar and some other States by subsequent order passed in the same case which has been reported in *(1995)4 SCC 695*.



In the instant case, incidental deprivation of personal liberty on account of appellant's arrest for alleged offences under IPC and the NDPS Act has been nearly seven years. The petitioner is accused of more than one offence. The highest punishment prescribed is imprisonment for minimum ten years and fine not less than rupees One lakh.

Considering the rival submissions, the period of custody, and judgement of the Apex Court in the case of ***Supreme Court Legal Aid Committee (Supra)***, this court is of the view that case has been made out for grant of bail to the petitioner.

Petitioner, above named, be released on bail on furnishing bail bond of Rs. 1,00,000/- (One lakh) with two sureties of the like amount each to the satisfaction of the learned 3rd Additional Sessions Judge-cum-Special Judge, Motihari, in connection with Dumaria Ghat PS Case No.81 of 2014, NDPS Case No.49 of 2014.

The application is allowed subject to the terms, conditions, discretion and satisfaction of the Special Judge, as per judgment of the hon'ble Supreme Court in the case of ***Supreme Court Legal Aid Committee (Supra)*** reported in ***(1994)6 SCC 731***.

(Madhuresh Prasad, J)

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