

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7347 of 2021

Arising Out of PS. Case No.-158 Year-2016 Thana- MALSALAMI District- Patna

Nagdeo Rai, Son of Late Dhanraj Rai @ Dhannajay Rai, Resident of
Mohanpur, P.S.- Raghapur, District - Vaishali.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Niraj Kumar, Advocate

For the Opposite Party/s : Mr.Harendra Prasad, APP

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

3 20-07-2021 The matter has been taken up today for consideration
through video conferencing.

2. The learned counsels are appearing and making
submissions from their residence. The Court Master and
Secretary are also part of this virtual Court proceedings from
their homes, all with the aid of audio visual technology.

3. Heard learned Counsel for the petitioner and the
learned APP for the State.

4. The petitioner seeks bail in connection with
Special Case No.27/16, arising out of Malsalami P.S. Case
No.158 of 2016, registered for the offence punishable under
Section 20/22/25/25(A) of the N.D.P.S. Act.

5. On a secret information, the police have proceeded
to the place. 640 Kilogram '*Ganja*' has allegedly been



recovered from two vehicles (a truck and a Bolero). It is stated that the petitioner was seated in the truck.

6. Petitioner's counsel submits that it is a case of false implication. He submits that there is no compliance of the mandatory procedure prescribed under Sections 42, 43 and 50 of the N.D.P.S. Act. Petitioner has no concern with the alleged recovery and he is also not the owner of the vehicles in question. Recovery is not from his conscious possession and he has become a victim of circumstances. It is further stated that since 10.06.2016, he is in custody in connection with this case lodged for the offences under Section 20/22/25/25(A) of the N.D.P.S. Act.

7. Petitioner's counsel refers to Clause (iii) of paragraph 15 of the judgment of the Apex Court in the case of ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners Vs. Union of India and Others***, reported in (1994) 6 SCC 731.

8. It is submitted that the highest punishment prescribed for the offences for which he is accused is imprisonment for minimum ten years and fine not less than Rupees One lakh and having been in custody for more than five years, the petitioner is entitled to be released on bail on the same



terms and conditions as contained in the judgment of the Hon'ble Apex Court in the case of ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners*** (supra).

9. The petitioner's implication is under Section 20/22/25/25(A) of the N.D.P.S. Act. Punishment prescribed under Sections 20 and 21 is minimum ten years and maximum twenty years, which, as per the Court's opinion, is covered by Para 15(iii) of the judgment of the ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners*** (supra).

10. Learned APP for the State has opposed the prayer for bail. However, having regard to the judgment of the Hon'ble Apex Court, he is not in a position to dispute the submission relying upon the judgment of the ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners*** (supra).

11. This Court considers it useful to quote the directions, and general terms and conditions laid down by the Apex Court in paragraphs 15 and 16 of the judgement, relevant extract of which reads as follows:

“15..... 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 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 Special Judge concerned 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."

12. Directions issued in the case of ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners*** (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***.

13. In the instant case, incidental deprivation of personal liberty on account of petitioner's arrest on 10.10.2016 for alleged offences under the NDPS Act has been more than six years.

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

15. Accordingly, let the 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 Additional District & Sessions Judge-XXII, Patna, District-Patna, in connection with Special Case No.27/16, arising out of Malsalami P.S. Case No.158 of 2016.

16. 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 Representing Undertrial Prisoners*** (supra).

17. This Court would expect that the petitioner's counsel would honour his undertaking in the instant proceedings regarding supply of the requisite court fee etc. within two weeks from the date he is called upon to do so by the office.

(Madhuresh Prasad, J)

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