

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.6046 of 2022

Arising Out of PS. Case No.-5 Year-2016 Thana- D.R.I District- Muzaffarpur

Sumit Kumar Tiwari, Son of Nand Gopal Tiwari, Resident of Village - Roam ,
P.O. and P.s.- Katrasgarh, Distt.- Dhanbad, Jharkhand.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Union of India through Directorate of Revenue Intelligence, Regional Unit, 1st floor, Customs office Building, Imali Chatty Muzaffarpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Siddharth Harsh, Advocate

For the Opposite Party/s : Mr. Tapeswar Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

2 13-06-2022 Heard learned counsel for the petitioner and learned APP
for the State.

Let the defect (s), as pointed out by the office, be removed within a period of four weeks from the date of resumption of physical filing and physical removal of defect.

In the present case, the petitioner seeks bail in connection with D.R.I. Case No. 05 of 2016 registered for the alleged offences under Section 8 read with Section 22 of NDPS Act

The prosecution case is that the petitioner along with co-accused was apprehended while driving a truck from which 483 Kg of Ganja was recovered.

The learned counsel for the petitioner has submitted by



referring to a judgment rendered by the Hon'ble Apex Court in the case of ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners vs. Union of India & Others reported in (1994) 6 SCC 731***, that since the petitioner is in custody since 02.10.2016, he has now become entitled to grant of bail in terms of paragraph no. 15 (iii) of the said judgment as also subject to the conditions mentioned in the said paragraph, which requires to be imposed upon the petitioner for the purpose of grant of bail.

Per contra, learned counsel for the State has though opposed the prayer for grant of bail to the petitioner, but has submitted that if the case of the petitioner is covered by the aforesaid judgment rendered by the Hon'ble Supreme Court in the case of ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners vs. Union of India & Others (supra)***, this Court may consider granting bail to the petitioner.

At the very outset, this Court takes note of detailed order dated 27.10.2021 passed by a co-ordinate Bench of this Court in Cr. Misc. No.16096 of 2021 (Annexure-2). The coordinate Bench of this Court, after a detailed deliberation over paragraph 15 of the aforesaid judgment rendered in the case of ***Supreme Court Legal Aid Committee Representing Undertrial***



Prisoners vs. Union of India & Others (supra) has opined that the petitioner has been made an accused for the offences under Section 22 of the NDPS Act, 1985 and the minimum punishment, which can be imposed upon the petitioner, is rigorous imprisonment for a term, which shall not be less than 10 years, but which may extend to 20 years. Relying upon the above-referred judgment of the Hon'ble Supreme Court, the coordinate Bench allowed the bail petition of similarly situated co-accused, namely, Kali Charan on the ground that since the undertrial accused has been charged with an offence under the NDPS Act, 1985 punishable with minimum imprisonment of 10 years and a minimum fine of Rs. 1 Lakh, such an undertrial will be released on bail if he has been in jail for not less than 5 years provided he furnishes bail bond of a sum of Rs. One Lakh with two sureties for the same amount.

In view of the aforesaid judgment, paragraph 15 (iii), of Hon'ble Supreme Court in the case of ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners vs. Union of India & Others (supra)***, this Court finds that the petitioner is in custody since 02.10.2016, as such, he has already completed a jail term of five years, thus, applying the law laid down by the Hon'ble Supreme Court in the aforesaid decision along with the



fact that the similarly situated co-accused has been allowed bail by a coordinate Bench of this Court, this Court is of the considered view that the petitioner is entitled to the privilege of bail, subject to him fulfilling the conditions mentioned in paragraph no. 15 (i) to (vii) of the aforesaid judgment as also subject to the petitioner furnishing bail bond of a sum of Rs. one lac with two sureties of the like amount.

Accordingly, the petitioner above named is directed to be released on bail on furnishing bail bond of Rs. 1,00,000/- (one lac) with two sureties of the like amount each to the satisfaction of learned Additional District and Sessions Judge-III-cum-Special Judge, Muzaffarpur in connection with DRI Case No. 5 of 2016 subject to fulfillment of the conditions mentioned in paragraph no. 15 (i) to (vii) of the aforesaid judgment rendered by the Hon'ble Apex Court and further subject to the conditions as mentioned in Section 437 (3) of the Code of Criminal Procedure.

(Arun Kumar Jha, J)

V.K.Pandey/-

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