

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17063 of 2021

Arising Out of PS. Case No.-334 Year-2018 Thana- MUNGER MUFFASIL District- Munger

Md Niyajul Rahman @ Md Niyajur Rahman @ Gulo S/o Late Md. Rasid @
Late Abdul Rasid R/o village- Mirzapur, Bardah, P.S.- Muffasil, District-
Munger

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Shri. Y.C. Verma, Sr. Advocate

For the Opposite Party/s : Mr. APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

13 24-08-2022 Heard learned senior counsel appearing on behalf of
the petitioner and learned APP appearing on behalf of the State.

Let the defect(s), if any, be removed within a period
of four weeks from today.

This is the second bail petition filed by the petitioner
after his prayer of bail got rejected in Cr. Misc. No. 54336 of
2019 vide order dated 04.12.2019.

At the outset, learned senior counsel, Shri Y.C. Verma,
appearing on behalf of the petitioner, submitted that the present
bail petition is on the ground, firstly, that the rejection was
guided by stage, secondly, the similarly situated co-accused
persons have already been granted bail and, thirdly, still after



two years of rejection of prayer of bail, the matter is pending for appearance of accused persons, where the chance of trial is very remote and, as such, petitioner cannot be kept behind the bar for indefinite period.

The petitioner seeks bail in connection with Muffasil P.S. Case No. 334 of 2018 registered for the offence under Sections 121, 379, 414, 120(B) and 34 of the Indian Penal Code, Sections 25(1-a), 25(1-aa), 25(1-b)a, 26 and 35 of the Arms Act and Section 39 U.A.P. Act.

The accused/petitioner is named in the F.I.R. and is in custody since 08.01.2019.

The allegation against the petitioner is to help in sale and purchase of AK-47 and its cartridges, who is a retired army personnel.

Learned senior counsel appearing on behalf of the petitioner relied upon the decision of the Hon'ble Supreme Court, wherein, it was observed by Justice Krishna Iyer, in ***Gudikanti Narasimhulu v. State [Gudikanti Narasimhulu v. State, (1978) 1 SCC 240 : 1978 SCC (Cri) 115]*** that: (SCC p. 242, para 1)

'1.... the issue [of bail] is one of liberty, justice, public safety and burden of



the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. ... After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of “procedure established by law”. The last four words of Article 21 are the life of that human right.’

Learned senior counsel submitted that in the backdrop of the observation of the Hon’ble Supreme Court, as of Gudikanti Narasimhulu (supra), the facts and circumstances of the present case, demand a judicial discretion, in view of Article 21 of the Constitution of India, in the background of settled legal proposition that “bail is the rule and jail is the exception”. In the background of above, learned senior counsel pointed out the factual position of this case, wherein, the petitioner was named on the basis of disclosure made by co-accused persons with a limited and marginal allegations that the petitioner involved in helping main accused persons in sale and purchase of prohibited fire arms and ammunitions like AK-47 and its cartridges. It is further submitted that nothing surfaced during the course of investigation, which may suggest that how



petitioner was helping in sale and purchase activities of prohibited arms, as alleged in F.I.R., to connect the petitioner, *prima facie*, with the allegation as set out in the F.I.R. It is also submitted that, admittedly, this is not a case of recovery of prohibited arms and ammunitions from the physical possession of the petitioner. It is submitted that petitioner is in custody since 08.01.2019 i.e., about three years, where investigation is complete for which chargesheet has been submitted long back and, as such, there is no chance of tampering with the evidence. While concluding the argument, it is submitted that by taking note of all allegations in totality, in the background of legal proposition as laid by Hon'ble Supreme Court, while deciding the matter in *Nimmagadda Prasad Vs. Central Bureau of Investigation reported in (2013) 7 SCC 466*, this is a fit case to grant bail to the petitioner, where paragraph no. 24 of the judgement, observed as:

“24. While granting bail, the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances



which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the Court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”

Learned APP appearing on behalf of the State, while opposing the prayer of bail, submitted that petitioner is named in the F.I.R. but fairly conceded that same is on the basis of



disclosure made by the co-accused and allegation is limited to help in sale and purchase activities.

From the report of Additional District and Sessions Judge-VII, Munger dated 29.11.2021, as communicated through Letter No. 88, it appears that the matter was pending for appearance of number of accused persons.

In view of the facts and circumstances, as mentioned above, as there is no recovery of prohibited arms and ammunitions from the possession of the petitioner, whose name surfaced on the basis of disclosure made by apprehended co-accused with marginal allegation, as to help in sale and purchase activities, without any corroborative evidence coupled with the fact that petitioner is in custody since 08.01.2019 i.e., about three years, where chance of trial is very remote, let the petitioner, above named, is directed to be released on bail in connection with Muffasil P.S. Case No. 334 of 2018 on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Munger/concerned Court, subject to the following conditions:

“(i) That accused/petitioner shall
not involve in the similar nature of offence



till the conclusion of trial, failing which the State shall be at liberty to move before the Trial Court itself for the cancellation of bail bond of the petitioner.

(ii) That accused/petitioner shall cooperate in the trial and shall be physically present on each and every date before the Trial Court till conclusion of the trial and exemption from physical appearance be allowed by the Trial Court, only on medical ground of the petitioner, duly supported by the documents.

(iii) That one of the bailors shall be Md. Sanu Rahman @ Shanu Rahman, who is the son of the petitioner and deponent of the present bail petition.”

(Chandra Shekhar Jha, J)

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