

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8687 of 2022

Arising Out of PS. Case No.-44 Year-2019 Thana- SHIVSAGAR District- Rohtas

Girija Kant Singh, Son of Late Jagdish Singh, Resident of Village and P.O.-
Alampur, P.S.- Sheosagar (Baddi), District- Rohtas.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner	:	Mr. N.K. Agrawal, Sr. Advocate Mr.Kamlendra Pd. Singh, Advocate
For the State	:	Ms. Pushpa Sinha, APP

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

12 12-10-2022 Heard Mr. N.K. Agrawal, learned Senior Counsel for
the petitioner and the learned APP for the State.

The petitioner seeks bail in connection with NDPS
Case No.05 of 2019 arising out of Sheosagar (Baddi O.P.) P.S.
Case No.44 of 2019 registered for the offence punishable under
Sections 8(b), 18 and 20(a) of the NDPS Act.

70 Kg. opium has allegedly been seized while it was
being cultivated on the petitioner's land.

Learned Senior Counsel Mr. N.K. Agrawal submit
that the petitioner has been framed in this case, though the land
does not belong to him. By making such submission, petitioner
had prayed for bail in Cr.Misc. No.11483 of 2020, which came
to be rejected on 27.08.2020 with an observation that the



petitioner may renew his prayer for bail after completion of one and half years in custody. Thereafter, the petitioner renewed his prayer by filing Cr.Misc. No.32528 of 2021, which was withdrawn with liberty to renew his prayer for bail before the trial court, vide order dated 24.12.2021.

The petitioner has renewed his prayer before the Additional Sessions Judge-XV, Sasaram, Rohtas and on rejection of his prayer for bail, he has filed the instant bail application.

It is submitted by the learned Senior Counsel that the allegation of the seized opium being 70 Kg. is not supported by the seizure list wherein the weight of the item has not been mentioned.

The learned State Counsel, however, submits that specific weight has been mentioned as 70 Kg. only after proper weighing of the seized substance. The petitioner cannot derive any benefit by virtue of inadvertent omission to mention such weight in the seizure list.

Considering the rival submissions and since petitioner's bail has been rejected twice, taking into consideration the allegation of seizure of 70 Kg. of opium, this Court is not inclined to take a different view today, on this



ground, in view of specific bar under Section 37 of the NDPS Act regarding grant of bail and 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, paragraphs 15 and 16 of which reads as follows :

"15We 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 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 31-A 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 case 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 trials 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."

This Court is not inclined to allow the prayer for bail, since the observations of the Apex Court have been made applicable to the State of Bihar and some other States by subsequent order passed in the same case, which is reported in **(1995) 4 SCC 695**. The petitioner has remained in custody for nearly three years i.e., since 13.11.2019. The punishment prescribed for offence under Section 18 of the NDPS Act, which



is one of the offences under which petitioner is accused, is minimum ten years. As per decision of the Apex Court in the case of *Supreme Court Legal Aid Committee* (supra), the petitioner is not considered entitled to grant of bail. The prayer for bail is rejected.

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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