

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21541 of 2022**

Arising Out of PS. Case No.-6 Year-2017 Thana- GOVERNMENT OFFICIAL COMP.
District- Patna

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Jageshwar Prasad S/O Late Hemlal Rai Resident of Near Model Public
School, Bankipur Gorak, P.S.- Gatuha, District- Patna

... .. Petitioner/s

Versus

The Union of India through Narcotics Control Bureau, Patna Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Verma, Advocate
For the UOI : Mr. Shail Kumari, C.G.C.

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**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER**

7 13-12-2022 Heard learned 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.

The petitioner seeks bail in connection with Special
Case No. 37 of 2017 registered for the offence under Sections
20(b)(ii)(c) and 29 of the N.D.P.S. Act.

The accused/petitioner is in custody since 26.02.2017.

The allegation against the petitioner is to have in
possession of 29 quintals of '*Ganja*', alongwith other co-
accused persons, from a truck, where petitioner apprehended on
the spot.

Learned counsel appearing on behalf of the petitioner
submitted that petitioner is in custody since 26.07.2017 i.e., for
more than 5 years and 10 months, where almost no progress has
been made in the ongoing trial, for the reason that till date, only



one witness has been examined by the learned Trial Court, whereas charges were framed on 10.05.2018, accordingly, present bail petition is pressed herewith, to consider regular bail of the petitioner, sympathetically, in the light of judgement 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***. It is also submitted that the present official complaint was filed by NCB almost after six months of arrest of the petitioner. It is further submitted that compliance of Sections 42 and 50 of the N.D.P.S. Act, which is otherwise mandatory, has not been made in the present case and, moreover, it is admitted position that recovery was not made from the conscious physical possession of the petitioner, as he was found sitting in a separate vehicle, having no connection with the alleged truck.

At this juncture, it would be relevant to reproduce paragraph no.15 of the judgement of the Apex Court in the case of ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners (supra)***, which reads as under:

“15. But the main reason which motivated the Supreme Court Legal Aid Society to file this petition under Article 32



of the Constitution was the delay in the disposal of cases under the Act involving foreigners. The reliefs claimed included a direction to treat further detention of foreigners, who were languishing in jails as undertrials under the Act for a period exceeding two years, as void or in any case they be released on bail and it was further submitted by counsel that their cases be given priority over others. When the petition came up for admission it was pointed out to counsel that such an invidious distinction between similarly situate undertrials who are citizens of this country and who are foreigners may not be permissible under the Constitution and even if priority is accorded to the cases of foreigners it may have the effect of foreigners being permitted to jump the queue and slide down cases of citizens even if their cases are old and pending since long. Counsel immediately realised that such a distinction if drawn would result in cases



of Indian citizens being further delayed at the behest of foreigners, a procedure which may not be consistent with law. He, therefore, rightly sought permission to amend the cause-title and prayer clauses of the petition which was permitted. In substance the petitioner now prays that all undertrials who are in jail for the commission of any offence or offences under the Act for a period exceeding two years on account of the delay in the disposal of cases lodged against them should be forthwith released from jail declaring their further detention to be illegal and void and pending decision of this Court on the said larger issue, they should in any case be released on bail. It is indeed true and that is obvious from the plain language of Section 36(1) of the Act, that the legislature contemplated the creation of Special Courts to speed up the trial of those prosecuted for the commission of any offence under the Act. It is equally



true that similar is the objective of Section 309 of the Code. It is also true that this Court has emphasised in a series of decisions that Articles 14, 19 and 21 sustain and nourish each other and any law depriving a person of “personal liberty” must prescribe a procedure which is just, fair and reasonable, i.e., a procedure which promotes speedy trial. See Hussainara Khatoon (IV) v. Home Secy., State of Bihar [(1980) 1 SCC 98 : 1980 SCC (Cri) 40] , Raghbir Singh v. State of Bihar [(1986) 4 SCC 481 : 1986 SCC (Cri) 511] and Kadra Pahadiya v. State of Bihar [(1983) 2 SCC 104 : 1983 SCC (Cri) 361] to quote only a few. This is also the avowed objective of Section 36(1) of the Act. However, this laudable objective got frustrated when the State Government delayed the constitution of sufficient number of Special Courts in Greater Bombay; the process of constituting the first two Special Courts started with the



issuance of notifications under Section 36(1) on 4-1-1991 and under Section 36(2) on 6-4-1991 almost two years from 29-5-1989 when Amendment Act 2 of 1989 became effective. Since the number of courts constituted to try offences under the Act were not sufficient and the appointments of Judges to man these courts were delayed, cases piled up and the provision in regard to enlargement on bail being strict the offenders have had to languish in jails for want of trials. As stated earlier Section 37 of the Act makes every offence punishable under the Act cognizable and non-bailable and provides that no person accused of an offence punishable for a term of five years or more shall be released on bail unless (i) the Public Prosecutor has had an opportunity to oppose bail and (ii) if opposed, the court is satisfied that there are reasonable grounds for believing that he is not guilty of the offence and is not likely to indulge in similar



activity. On account of the strict language of the said provision very few persons accused of certain offences under the Act could secure bail. Now to refuse bail on the one hand and to delay trial of cases on the other is clearly unfair and unreasonable and contrary to the spirit of Section 36(1) of the Act, Section 309 of the Code and Articles 14, 19 and 21 of the Constitution. We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed we have adverted to this section in the earlier part of the judgment. We have also kept in mind the interpretation placed on a similar provision in Section 20 of the TADA Act by the Constitution Bench in Kartar Singh v. State of Punjab [(1994) 3 SCC 569 : 1994 SCC (Cri) 899] . Despite this provision, we have directed as above mainly at the call of



Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as held by a Constitution Bench of this Court in A.R. Antulay v. R.S. Nayak [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] , release on bail, which can be taken to be embedded in the right of speedy trial, may, in some cases be the demand of Article 21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive



a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters. What then is the remedy? The offences under the Act are grave and, therefore, we are not inclined to agree with the submission of the learned counsel for the petitioner that we should quash the prosecutions and set free the accused persons whose trials are delayed beyond reasonable time. Alternatively he contended that such accused persons whose trials have been delayed beyond reasonable time and are likely to be further delayed should be released on bail on such terms as this Court



considers appropriate to impose. This suggestion commends to us. 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 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.”

Per contra, learned C.G.C., Ms. Shail Kumari appearing on behalf of the Union of India, NCB, while opposing the prayer of bail submitted that, if the case of the petitioner is covered by the aforesaid judgement rendered by the Apex Court in the case of ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners (supra)***, this Court may consider the grant of bail to the petitioner.

The Hon’ble Apex Court, in the case of ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners (supra)***, in paragraph no. 15(iii), has been pleased to direct that where an undertrial accused is charged with an offence under the N.D.P.S. act, 1985 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 bond for a sum of Rs. 1,00,000/- (Rupees One Lakh) with two sureties for the like amount. Now coming to the present case, this Court finds that the petitioner is languishing in custody since 21.01.2017, hence, he has already completed a jail term of five years, thus, applying



the law laid by the Hon'ble Apex Court in the case of ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners (supra)***, this Court is of the considered view that the petitioner is entitled to the privilege of regular bail, subject to him fulfilling the conditions mentioned in paragraph no. 15(i) to (viii) of the aforesaid judgement as also subject to the petitioner furnishing bail bond of a sum of Rs. 1,00,000/- (Rupees One Lakh) with two sureties of the like amount.

Accordingly, I deem it fit and proper to enlarge the petitioner, above named, on bail in connection with Special Case No. 37 of 2017 on furnishing bail bond of Rs.1,00,000/- (Rupees One Lakh) with two sureties of the like amount, as also subject to the fulfillment of the conditions mentioned in paragraph nos. 15(i) to (viii) of the aforesaid judgement rendered by the Hon'ble Apex Court, each to the satisfaction of learned Additional District and Sessions Judge-XVII, Patna/concerned Court, and further subject to the conditions as laid down u/s 437(3) of the Cr.P.C.

(Chandra Shekhar Jha, J)

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