

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.40615 of 2022**

Arising Out of PS. Case No.-6 Year-2021 Thana- GOVERNMENT OFFICIAL COMP.  
District- Aurangabad

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Dharamraj Singh @ Junna, Son Of Haradev Yadav @ Hardev Sadhu @  
Hardeo Singh, R/O Village- Nathpur, P.S.- Itahri, District- Buxar  
... .. Petitioner/s

Versus

The Union of India through Intelligence Officer, Narcotics Control Bureau,  
Patna Zonal Unit. ... .. Opposite Party/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Yogesh Chandra Verma- Sr. Advocate<br>Mr. Priyanka Singh- Advocate |
| For the N.C.B.       | : | Mr. A. K. Pandey- SC-CGC<br>Mr. Ravinder Kumar Sharma- CGC             |

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**CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA**  
**ORAL ORDER**

8      07-12-2022                      Heard learned senior counsel for the petitioner and  
  
learned Central Government Counsel for the N.C.B.

The petitioner seeks bail in a case registered for the  
offences punishable under Sections 8(c), r/w 20(b)(ii)(c), 25 and  
29 of the N.D.P.S. Act.

The learned senior counsel for the petitioner submits  
that the petitioner is in custody since 07.04.2021, he has  
antecedent of one case and charge-sheet has been submitted in  
the case.

This is the second attempt of the petitioner to seek  
bail as earlier it was rejected by order dated 24.03.2022 in Cr.  
Misc. No.52367 of 2021. The learned senior counsel submits  
that the order dated 24.03.2022 in Cr. Misc. No.52367 of 2021  
in detail recorded the allegation and submission made with



respect to the petitioner. It is next submitted that though charges have been framed, but till today only one witness has been examined out of six. It is also submitted that the Hon'ble Supreme Court in the case of *State by Narcotics Control Bureau vs. Pallulabid Ahamad Arimutta and another, SLA (Criminal) No.242 of 2022*, along with other cases at Paragraph-10 has held that in *Tofan Singh vs State of Tamil Nadu, (2021) 4 SCC 1*, it has been held that a confessional statement recorded under Section 67 of the Narcotic Drugs and Psychotropic Substances Act will remain inadmissible in the trial of an offence under the Narcotic Drugs and Psychotropic Substances Act. In the teeth of the aforesaid decision, the arrests made by the petitioner- NCB, on the basis of the confession/voluntary statement of the respondents or the co-accused under Section 67 of the Narcotic Drugs and Psychotropic Substances Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16<sup>th</sup> September, 2019, 14<sup>th</sup> January, 2020, 16<sup>th</sup> January, 2020, 19<sup>th</sup> December, 2019 and 20<sup>th</sup> Jaunary,



2020 passed in SLP (Cri.) No.@ Diary No.22702 of 2020, SLP (Cri.) No.1454 of 2021, SLP (Cri.) No.1465 of 2021, SLP (Cri.) No.1773-74/ 2021 and SLP (Cri.) No.2080 of 2021 respectively. The impugned orders are, accordingly, upheld and the Special Leave Petitions filed by the petitioner- NCB seeking cancellation of bail granted to the respective respondents, are dismissed as meritless.

The learned senior counsel thus relying on the aforesaid judgment submits that in the present case also the petitioner was not arrested from the spot and nothing was recovered from his conscious possession and his name transpired in the case based on confessional statement of the apprehended accused which is not admissible in evidence in terms of the law laid by Hon'ble Supreme Court in ***Tofan Singh vs. State of Tamil Nadu, (2021) 4 SCC 1.***

The learned senior counsel next submits that after the arrest of the petitioner, his confessional statement was also recorded and in pursuance of his confessional statement also, there was no recovery from any place. It is thus submitted that the confessional statement of the accused also does not led to recovery of any narcotics rather he was made to accept his guilt in police custody that he was also involved in the occurrence.



The learned senior counsel next submits that purpose of arrest is not to punish, but to ensure that the investigation and trial is not hampered in any manner. It is next submitted that whenever an accused is brought before the Court, the allegation remains in the realm of allegation and the investigation conducted is still to be proved in a duly constituted trial. It is thus submitted that presumption is of innocence. It is further submitted that no doubt, petitioner has antecedent of one case under the N.D.P.S. Act, but then the said case was also similar to the present one. It is also submitted that once an accused gets implicated in any kind of case, then subsequently his implication in similar nature of case becomes rampant. It is also submitted that since petitioner has remained in custody since 07.04.2021 i.e. for more than one year, seven months and in the event of acquittal of the petitioner in the trial how his period of incarceration would be compensated and in the event, if the petitioner is convicted in the trial, he will serve the sentence. The learned senior counsel next submits that the petitioner will never evade the law and will present himself in the trial on each and every date.

The learned counsel appearing for the NCB vehemently opposes the bail application and submits that a



supplementary counter-affidavit has been filed wherein it has been specifically stated that no doubt, the petitioner was not arrested from the spot, but then his name transpired in the confession of the apprehended co-accused and during the course of investigation, it also transpired that he was in contact with the accused persons including Jakub Manjhi, who is alleged to be the main supplier of the Ganja. The learned counsel next relies on an order passed by the Hon'ble Supreme Court in ***Cr. Misc. No.1101-1002 of 2022 arising out of Special Leave to Appeal (CRL) No.6128-29 of 2021 (Narcotics Control Bureau vs. Mohit Agrawal)*** to submit that the Hon'ble Supreme Court in a case of similar nature was pleased to set aside the order granting bail to the respondent by the Hon'ble High Court by order dated 19.07.2022. The learned counsel next relies on the said order and places Para-17 of the said judgment:-

*“17. Even dehors the confessional statement of the respondent and the other co-accused recorded under Section 67 of the N.D.P.S. Act, which were subsequently retracted by them, the other circumstantial evidence brought on record by the appellant- NCB ought to have dissuaded the High Court from exercising its discretion in favour of the respondent and concluding that there were reasonable grounds to justify that he was not guilty of such an offence under the NDPS Act. We are not persuaded by*



*the submission made by learned counsel for the respondent and the observation made in the impugned order that since nothing was found from the possession of the respondent, he is not guilty of the offence for which he has been charged. Such an assumption would be premature at this stage.”*

The learned senior counsel for the petitioner rebuts the submission of the learned counsel appearing for the NCB and submits that the judgments are to be read in the context of the case and should not be cited like an **euclid theorem**. The learned senior counsel further submits that from perusal of Para-7 of the said judgment on which the learned counsel for the NCB relies, it would manifest that in the said case based on confessional statement, there was recovery of Narcotics from the godown of one Pramod Jaipuria, but the present case under consideration is completely different as here the petitioner came to be implicated based on confessional statement and after his arrest his confessional statement was recorded and he was made to accept his guilt before the officer of the NCB, as aforesaid. The learned senior counsel at the cost of repetition again submits that in the event of acquittal of the petitioner in the trial how his period of incarceration would be compensated and in the event, if the petitioner is convicted in the trial, he will serve the sentence.



Considering the submission made by the learned senior counsel for the petitioner, the petitioner, above-named, is directed to be released on bail on his furnishing bail-bonds in the sum of Rs. 50,000/- (Rupees Fifty Thousand) with two sureties of the like amount each to the satisfaction of learned Court below where the case is pending in connection with N.C.B. Case No.06 of 2021, subject to condition that one of the bailors of the petitioner shall be his father, namely, Haradev Yadav @ Hardev Sadhu @ Hardeo Singh.

The application stands allowed.

However, in the event, if learned trial Court comes to a conclusion that petitioner after his release despite giving assurance to this Court that he will present himself on each and every date is trying to delay the trial or has not appeared on two consecutive dates, the learned trial Court shall forthwith cancel his bail bonds and shall take all coercive steps to ensure that petitioner is behind bar.

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**(Satyavrat Verma, J)**

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