

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.54566 of 2022

Arising Out of PS. Case No.-49 Year-2020 Thana- BAKHTIYARPUR District- Patna

BIRENDRA KUMAR, Son of Late Rajendra Pd. Yadav, R/o Naya Tola
Dedaur, P.S.- Bakhtiyarpur, District - Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Rahul Kumar, Advocate

For the Opposite Party/s : Ms.Pushpa Sinha, APP

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

3 21-12-2022 Heard learned counsel for the petitioner and the
learned APP for the State.

2. The petitioner seeks bail in connection
with Special N.D.P.S. Case No.32 of 2020 arising out of
Bakhtiyarpur P.S. Case No.49 of 2020 registered for the
offences punishable under Sections 20(b)(II)(C), 22(c) of the
NDPS Act of the Indian Penal Code.

3. The petitioner had earlier moved this
Court twice in *Cr. Misc. No. 2233 of 2021*, which was rejected
vide order dated 31.08.2021, and in *Cr. Misc. No. 38087 of*
2022, which was dismissed as withdrawn vide order dated
24.08.2022.

4. The prayer for bail in respect of the
petitioner is renewed by submitting that the petitioner has now



completed nearly three years in custody and pending trial.

5. The Court had requisitioned a report from the trial court regarding the stage of trial. The report suggests that the matter is fixed for prosecution evidence.

6. On 31.08.2021, the petitioner's prayer was earlier considered on merits and in view of the bar under Section 37 of the Act, having regard to the alleged recovery being 40 Kilograms (commercial quantity), the prayer was rejected. Since the prayer has been renewed raising a plea regarding period of custody, this Court would consider the petitioner's plea in view of the law settled by 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***, relevant extract of the judgment is being reproduced here:-

"....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 concerned Special Judge 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 [31A](#) of the Act, such an undertrial shall not be entitled to be released on bail by virtue of this order.”

7. The petitioner is accused of offences under the Act punishable with minimum imprisonment of 10 years. He has remained in custody for nearly 3 years. Thus, as



per the judgment of the Apex Court in the case of *Supreme Court Legal Aid Committee* (supra), this Court is not inclined to allow the petitioner's prayer for bail.

8. Application is rejected.

9. The Court expects that Court concerned to proceed expeditiously in the trial with a view to its conclusion, without granting any undue adjournments or unnecessary delay.

10. 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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