

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3945 of 2022

Arising Out of PS. Case No.-1 Year-2017 Thana- GOVERNMENT OFFICIAL COMP.
District- Patna

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Lal Bahadur Chaudhary S/o Sri Ram Raj Chaudhary, Resident of Village-
Koiri Bandh (Jhariya), P.O. and P.S.-Jhariya, P.S.-District- Dhanbad
(Jharkhand).

... .. Petitioner/s

Versus

1. The Union Of India.
2. The State of Bihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner	:	Mr.Ajay Kumar Singh, Advocate
For the Union of India	:	Mr. Kumar Sachin, C.G.C.
For the State	:	Mr.Uma Shankar Prasad Singh, APP

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

8 04-01-2023 Heard learned counsel for the petitioner and the learned
counsel for the Union of India as well as the learned counsel for
the State.

The petitioner seeks bail in connection with Special
(NDPS) Case No.10 of 2017 arising out of F.No.-
NCB/PZU/V/01/2017, instituted for the offence under Sections
8/220(C) of the Narcotic Drugs and Psychotropic Substances
Act.

Petitioner is alleged to be Driver of the truck from which
a huge quantity of *Ganja* (3284.220 Kgs.) is said to have been
recovered. The petitioner was apprehended on the spot along
with co-accused Nagendra Singh.

It is the petitioner's case that he has no concern with the
contents laden on the truck as his services were engaged for
driving the truck after loading of the same. He further submits



that it is now nearly six years since he was taken in custody and till date three witnesses have been examined. The trial is not likely to conclude in the near future as the same has been pending because of the fact that the co-accused is absconding.

Learned counsel for the State as well as the Union of India has submitted that steps will be taken to expedite the trial. The recovery is of a huge quantity.

Considering the rival submissions, the period of custody now being two days short of six years and the fact that the petitioner has no criminal antecedents, this Court would take notice of judgment 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, wherein the Apex Court has laid down the law for consideration in the matter of grant of bail for offences under the NDPS Act, relevance extract of which reads as follows :

“....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.

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 cases 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 trial 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."

The directions were made applicable to the State of Bihar and some other States by subsequent order passed in the same case, which has since been reported in ***(1995) 4 SCC 695***.

In the instant case, the incidental deprivation of personal liberty on account of petitioner's arrest for alleged offences under the IPC and the NDPS Act is two days short of six years. The petitioner has no antecedents and the minimum punishment prescribed is imprisonment for ten years.

Considering the rival submission, the period of custody and judgment of the Apex Court ***Supreme Court Legal Aid Committee (Supra)***, and since the petitioner has remained in custody now for much in excess of five years and having regard to the fact that the end of the trial is nowhere in sight, this Court is inclined to allow the prayer.

Let the petitioner, above named, be released on bail on furnishing bail bond of Rs.1,00,000/-(One lakh) with two sureties of the like amount each to the satisfaction of the learned Additional Sessions Judge-XVI, Patna, in connection with Special (NDPS) Case No.10 of 2017 arising out of F.No.-NCB/PZU/V/01/2017.

The application is allowed subject to the terms,



conditions, discretion and satisfaction of the Additional Sessions Judge/Special Judge, as per judgment of the Hon’ble Supreme Court in the case of *Supreme Court Legal Aid Committee (Supra)*, reported in *(1994)6 SCC 731*.

(Madhuresh Prasad, J)

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