

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11836 of 2023

Arising Out of PS. Case No.-654 Year-2020 Thana- BHABHUA District- Kaimur (Bhabua)

Moti Ram, Son Of Late Shiv Kumar Ram, R/O Village- Naibasti, P.S.-
Mohania, District- Kaimur At Bhabua

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Vikram Deo Singh, Advocate Mr. Pawan Kumar Singh, Advocate
For the Opposite Party/s	:	Ms. Meena Singh, APP

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

4 21-06-2023 Heard learned counsel for the petitioner and learned
counsel for the State.

The petitioner seeks bail in Bhabhua (Sonhan) PS Case No.654 of 2020, NDPS Case No.35 of 2020, instituted for the offence under Section 8(C), 20(b)(ii)(B), 22 and 27(A) 20/22/23 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity “NDPS Act”).

Having regard to the earlier orders rejecting petitioner's prayer after due consideration on merits on 02.08.2021 and 29.06.2022, this Court is not inclined to take a different view in the matter.

The Court would also take into consideration decision of Hon'ble 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 Hon'ble Apex Court considered the mandate and requirement of speedy trial in terms of Section 36 of the NDPS Act, Section 309 of the Code of Criminal Procedure and the Constitutional guarantee to fundamental rights under Articles 14,19 and 21 of the Constitution of India. In light of these statutory and Constitutional provisions, Apex Court has observed that incidental deprivation of personal liberty suffered by an arrested accused cannot be indefinite. It must be accompanied by speedy trial and a procedure which is fair, just, and reasonable, even if accused is in custody for alleged offence/s under the NDPS Act.

Having considered the issue in its totality, the Apex Court has issued certain directions in paragraph 15 of the judgement regarding grant of bail to an under trial, accused of the offences under the NDPS Act. Directions have been passed taking note of the long pendency of trials under the NDPS Act in spite of establishment of Special Courts in the State of Maharashtra. The directions, however, are subject to conditions specified by the Hon'ble Supreme Court in the judgement. This Court considers it useful to quote the directions, and general terms and conditions laid down by the Apex Court in paragraph 15



and 16 of the judgement, relevant 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."

Directions issued in the case of ***Supreme Court Legal Aid Committee (Supra)*** was made applicable to the State of Bihar and some other States by subsequent order passed in the same case which has been reported in ***(1995) 4 SCC 695***.

In the instant case, the incidental deprivation of personal liberty is for only two and a half years. The minimum punishment prescribed for the offences under which the petitioner has been made an accused is ten years and fine not less than one lakh.

Considering the legal position in the light of judgment of the Hon'ble Apex Court in the case of ***Supreme Court Legal Aid Committee (Supra)*** and also the period of custody, this Court is not inclined to allow the petitioner's prayer for bail.

Prayer for bail is rejected.

(Madhuresh Prasad, J)

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