

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22021 of 2022

Arising Out of PS. Case No.-39 Year-2020 Thana- INARWA District- West Champaran

JITENDRA SAH, Son of Shivaji Sah, Resident of Village - Khamhiya, P.S.-
Inarwa, District - West Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Bimlesh Kumar Pandey, Advocate

For the Opposite Party/s : Mr.Md. Matloob Rab, APP

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

3 02-01-2023 Heard learned counsel for the petitioner and the learned
APP for the State.

The petitioner seeks bail in connection with Inarwa P.S.
Case No. 39 of 2020 registered for the offence punishable under
Sections 414 and 34 of the Indian Penal Code and Section 8, 20(b)(ii)
(B) of the N.D.P.S. Act.

Learned counsel for the petitioner submits that by now
the petitioner has remained in custody since 13.06.2020, about two
and a half years. The allegation is of recovery of commercial quantity
(22 Kgs. of Ganja from the petitioner's house). The petitioner's prayer
for bail has earlier been rejected on merits on 04.10.2021 in *Cr. Misc.*
No. 16106 of 2021.

Learned APP submits that since the matter has already
been considered on merits, there is no scope for petitioner to make
any submissions in this regard. In so far as the period of custody is



concerned, he submits that it is just two and a half years. Viewed keeping in background the bar under Section 37, the petitioner's prayer should be rejected again.

Considering the rival submissions, the bar under Section 37 of the N.D.P.S. Act, as also judgment of the Hon'ble Apex Court in the case of *Supreme Court Legal Aid Committee Representing Undertrial Prisoners vs. Union of India and Anr.* reported in (1994) 6 SCC 731, and considering the fact that minimum 10 years is the prescribed punishment, the petitioner's present period of custody is not of much relevance.

The relevant extract of judgment in the case of *Supreme Court Legal Aid Committee (supra)* from paragraph 15 and 16 of the judgment is being reproduced for ease of reference:-

“....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:.....

.....(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.....”

In view of the above consideration, petitioners'



application for bail is rejected.

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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