

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.29157 of 2022

Arising Out of PS. Case No.-11 Year-2018 Thana- GOVERNMENT OFFICIAL COMP.
District- Patna

Govind Ghosh @ Govindo Ghosh (M) aged about 37 years, Son of Late Gopal Ghosh Resident of Khudiram pally Mal Bazar, P.O.- Bataigul Bazar, P.S.- Metali, Distt.- jalpaiguri (West Bengal)

... .. Petitioner/s

Versus

1. The State of Bihar
2. Narcotics Control Bureau, Patna through its Intelligence Officer , Union of India. Govt. of India.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Saket Anand, Adv.
For the UOI : Mr. Shail Kumari, CGC

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

12 26-04-2023 Heard learned counsel for the petitioner and learned counsel for the Union of India.

The petitioner seeks bail in Special (Narcotic Drugs and Psychotropic Substances) (for brevity, *NDPS*) Case No. 15 of 2018 arising out of F. No. NCB/PZU/V/II/2018 dated 06.03.2018, instituted for the offence punishable under Sections 20(b)((ii)(c) and 29 of the NDPS Act.

There is alleged recovery of 137 kgs of *Ganja* from the Bolero vehicle, from which the petitioner along with four other accused persons were apprehended.

Earlier, the prayer for bail of the petitioner was rejected on 09-01-2019, 19-03-2020 and 27-07-2021 having



regard to the commercial quantity of contraband alleged to have been recovered from the petitioner, keeping in view the bar to grant of bail under Section 37 of the NDPS Act. The prayer has now been renewed.

Learned counsel for the petitioner submits that the period of custody now having exceeded 05 years, the petitioner's prayer for bail should be considered in view of the decision of the Apex Court in the case of *Supreme Court Legal Aid Committee Representing Undertrial Prisoners Vs. Union of India & Another* reported in (1994)6 SCC 731.

Learned counsel for the Union of India opposed the prayer for bail. She, however, has handed over a copy of the instructions received on 24-04-2023 that out of 08 prosecution witnesses till date only two have been examined.

The Court would consider it useful to reproduce the general terms and conditions laid down by the Apex Court in paragraph 15-16 of the judgment, 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."

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

In the instant case, the incidental deprivation of personal liberty on account of appellant's arrest for alleged offences under the NDPS Act has been nearly five years two months. Petitioner is accused of more than one offence. The highest punishment prescribed is imprisonment for minimum 10 years under Section 20(b)(ii)(c) of the Act and fine.

Considering the rival submissions, the period of custody and judgment of the Apex Court in the case of ***Supreme Court Legal Aid Committee*** (supra), the Court is of



the opinion that the petitioner has made out a case for bail.

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-XVII-cum-Special Judge, NDPS Act, Patna/concerned Court, in connection with Government official Complaint case No. NCB/PZU/V/II/2018, Special (NDPS) Case No. 15/2018.

The application is allowed subject to the terms, conditions, discretion and satisfaction of the 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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