

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38202 of 2023**

Arising Out of PS. Case No.-20 Year-2018 Thana- GOVERNMENT OFFICIAL COMP.
District- Begusarai

KAJAL SARKAR, Son of Late Gopal Sarkar, R/o Village- 071160/07
Manjhaul, P.S.- Rani Bazar, District- West Tripura.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Union of India through Narcotics Control Bureau, Patna Zonal Unit,
Patna. Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr. Anshu Dhar Sharma, Advocate
For the Opposite Party/s :	Mrs. Dr. Indihar Kumari, APP
For the Union of India :	Mrs. Shail Kumari, CGC

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

5 22-09-2023 Heard Mr. Anshu Dhar Sharma, learned counsel for

the petitioner and Mrs. Shail Kumari, learned CGC for the

Union of India. Mrs. Dr. Indihar Kumari, learned APP for the

State is present.

2. The petitioner seeks regular bail, who has been
made accused in connection with N.D.P.S. Case No. 06 of 2018,
arising out of NCB/PZU/Cr. No. 20 of 2018, registered for the
offences punishable under Sections 8, 20 and 29 of the Narcotic
Drugs and Psychotropic Substances Act, 1985.

3. This is the second attempt on behalf of the
petitioner, as earlier his prayer for bail was negated by this
Court vide order dated 13.04.2022, passed in Cr. Misc. No.



56127 of 2021, taking into consideration the fact that 517 Kg of Ganja was recovered from Tata 407 vehicle, bearing registration No. BR01 GF 3887, of which the petitioner is said to be the driver. While disposing of the bail application, considering the fact that the petitioner has been incarcerated for over a period of four years, the trial court was directed to expedite the trial and conclude the same preferably within a period of six months, failing which liberty was given to the petitioner to renew his prayer for bail.

4. Despite the observation made by this Court, way back on 13.04.2022, even after lapse of more than one year and four months, the trial has not been concluded. A report with regard to the present status of the trial was called for from the learned trial court, wherein it has been mentioned that the case is fixed for prosecution evidence and the trial is likely to be concluded within nine months, after arriving of the Presiding Officer, as the Court is vacant for the present.

5. Learned counsel for the petitioner submits that the petitioner is a poor driver and he was not at all aware as to what material was kept in the sealed packets, as the same had been loaded by the consigner in favour of the consignee and he was only discharging the work of driver at the dictate of the



transporter, on a fixed wage/remuneration. Furthermore, the co-accused, who was escorting the petitioner's vehicle (Tata 407) by Zylo car, has already been allowed the privilege of bail by the learned coordinate Bench of this Court in Cr. Misc. No. 31768 of 2020, vide order dated 23.06.2021. He next submitted that now the petitioner has remained in custody for over a period of five years and five months and the trial is not being likely to be concluded in near future, thus keeping the petitioner behind the bar for indefinite period would defeat the right of his personal liberty.

6. On the other hand, learned counsel for the Union of India vehemently opposes the bail application and submits that huge quantity of Ganja, weighing about 517 Kg, containing in 48 packets were recovered from Tata 407 vehicle, which was being driven by the petitioner and even during the course of investigation ample materials have come suggesting the complicity of the petitioner. That apart, there is a rigor provided under Section 37 of the NDPS Act and, prima facie, the materials on record, pointing towards his guilt. Furthermore, the petitioner admitted his involvement in the crime.

7. Before parting with the final outcome, it would be worth to note here that it is trite law that deprivation of personal



liberty without ensuring speedy trial is not consistent with Article 21 of the Constitution of India. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. The Apex Court has held in the case of **Noor Mohammed Vs. Jethanand, (2013) 5 SCC 202**, that while a person in custody for a grave offence may not be released if trial is delayed, trial has to be expedited or bail has to be granted in such cases. Timely delivery of justice is a part of human rights. Denial of speedy justice is a threat to public confidence in the administration of justice.

8. Needless to observe that while granting bail to an accused of an offence under the NDPS Act, involving commercial quantity, apart from the conditions enumerated under Section 439 of the Cr.P.C., or any other law for the time being in force, the rigors of Section 37 of the NDPS Act must be taken into account, which specifies that no person accused of an offence punishable for a term of imprisonment of five years or more under this Act shall be released on bail, unless (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are



reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

9. The Apex Court in the case of **State of M.P. Vs. Kajad, (2001) 7 SCC 673** while commenting on Section 37 of the NDPS Act has held that liberal approach should not be adopted.

10. Coming to the present case, admittedly the petitioner has been incarcerated for over a period of five years and five months and as per the status report at present the court is vacant and the case is fixed for prosecution evidence. It is also the fact that the petitioner had been working as a driver of Tata 407 vehicle from which a huge quantity of Narcotics have been recovered when the false ceiling of the back cabin was broken. Further it has been highlighted that the concerned of a driver is always confined to the driving of one or different vehicles from one place to different destination as per the dictate of the transporter and owner and he usually not supposed to know what articles/materials are being transported under a sealed cover bags/packets, if the same has been concealed surreptitiously in collusion with the owner and consigner.

11. So far the statement of accused-petitioner



recorded under Section 67 of the NDPS Act is concerned, well settled it is, that the same is not admissible in law as has been held in the case of **Tofan Singh v. State of Tamil Nadu (2021) 4 SCC 1**.

11. Recently, the Apex Court in the case of **Mohd. Muslim Vs. State (NCT of Delhi), 2023 LiveLaw (SC) 260** in its penultimate paragraph no.19 and 20 held as follows:

“19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

20. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and



reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik, (2009) 2 SCC 624). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail."

12. Considering the prolonged incarceration of the petitioner and the likelihood of trial being not concluded in near future, as also the mandate of Apex Court, as discussed hereinabove, let the petitioner, named above, be released on bail on furnishing bail bonds of Rs.25,000/- (Rupees twenty five thousand) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge-I, Begusarai in connection with N.D.P.S. Case No. 06 of 2018, arising out of NCB/PZU/Cr. No. 20 of 2018, subject to the condition as the



trial court may impose, with the further conditions:

- (i) One of the bailors will be the local resident.
- (ii) The petitioner will cooperate in conclusion of the trial.
- (iii) He will remain present before the learned trial court, as and when required.
- (iv) He will not try to tamper with the evidence or intimidate the witnesses to delay the disposal of trial.
- (v) In the event of default of two consecutive dates without any cogent reason, his bail bonds will liable to be cancelled.

(Harish Kumar, J)

uday/-

U		T	
---	--	---	--

