

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46373 of 2023

Arising Out of PS. Case No.-101 Year-2021 Thana- BHAGWANPUR District- Kaimur
(Bhabua)

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Sanjay Kumar Son of Lalan Ram Resident of Village - Bajardihwan, P.S.-
Bhagwanpur, District - Kaimur (Bhabua).

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Krishna Prasad Singh, Sr. Advocate
Mr. Bhaskar Shankar, Advocate
For the Opposite Party/s : Mr. Zainul Abedin, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

3 01-09-2023 Heard learned counsel for the petitioner and learned
APP for the State.

2. In the present case, the petitioner seeks bail in connection with N.D.P.S. Case No. 18 of 2021, arising out of Bhagwanpur P.S. Case No. 101 of 2021, registered on 14.06.2021 for the alleged offences under Sections 8(c), 20(b) (ii)(c) and 29 of N.D.P.S. Act.

3. This is the second attempt of the petitioner to seek bail from this Court as his prayer for bail was earlier rejected vide order dated 31.08.2022 passed in Cr. Misc. No. 59423 of 2021.

4. As per prosecution case, the recovery of 25.300 kg of ganja was made from the house of the petitioner, who was



apprehending from the spot.

5. Learned senior counsel appearing on behalf of the petitioner submits that till date only 3 witnesses have been examined in this case and last witness was examined on 21.06.2022 since then none of the witnesses have been examined in this case and petitioner is languishing in custody since 15.06.2021 which is in violation of Article 21 of the Constitution of India. Learned counsel has relied upon a decision of the Hon'ble Apex Court in the case of ***Rabi Prakash Vs. The State of Odisha*** reported in ***2023 Live Law (SC) 533*** submitting that the Hon'ble Apex Court has held that prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b) (ii) of the NDPS Act. Learned senior counsel further submits that the petitioner is in custody since 15.06.2021 and there appears no chance of early conclusion of trial.

6. Learned APP opposes the submission made on behalf of the petitioner. Learned APP submits that there are only 5 witnesses although 3 witnesses have been examined, two are left to be examined in this case.



7. Perused the records.

8. I think that reliance placed by the learned senior counsel is not of much help since Hon'ble Apex Court took consideration of the fact there were 19 witnesses and only one witness had been examined till the case reached before the Hon'ble Apex Court. The same is not the situation in present case. So the embargo created under Section 37(1)(b)(ii) of the NDPS Act would come into play and this Court is not in a position to form an opinion that there are reasons to believe that the petitioner has not committed the offence. So the prayer for bail of the petitioner is rejected.

9. However, it is unfortunate that despite directions of this Court the learned trial court did not make sincere effort to conclude the trial though it was aware of the fact that the petitioner is in custody since 15.06.2021.

10. In compliance of the order dated 26.07.2023, a report has been received from learned Additional Sessions Judge-III, Kaimur at Bhabua wherein it has been submitted that out of five witnesses, three witnesses have been examined and the trial is likely to be concluded in approximately three months.

11. Under the aforesaid circumstances, learned trial court is directed to abide by its undertaking dated 04.08.2023



and conclude the trial within the time sought by it after taking up the case on day-to-day basis since the last witness was examined on 21.06.2022 and petitioner is languishing in custody since 15.06.2021 and submit a report in this regard to this Court.

12. At the same time, the Superintendent of Police, Kaimur at Bhabua is directed to ensure the production of remaining witnesses on the dates fixed positively, otherwise the Superintendent of Police, Kaimur at Bhabua will appear in person before this Court to explain the reason for non-production of the witnesses before the learned trial court.

13. For the purpose of perusal of the report of the learned trial court, list this matter on 08.12.2023.

(Arun Kumar Jha, J)

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