

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48368 of 2022

Arising Out of PS. Case No.-157 Year-2018 Thana- DAGARUA District- Purnia

Vikky Sahani @ Bikishaho Son of Late Shyam Sundar Sahani Resident of
Village- Nandan Nagar Sharkarpur (SAKARPARA), P.S.- Kapital Complex,
Dist.- Tripura West, State- Tripura

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance:

For the Petitioner/s : Mr. Viveka Nandsingh, Advocate
For the Opposite Party/s : Mr. Anil Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

5 05-04-2023 Let the defects, if any, pointed out by the office be removed within four weeks from the date of this order, failing which the matter be listed again under the appropriate heading for necessary action.

2. Heard learned counsel for the petitioner and the learned APP for the State.

3. Petitioner seeks regular bail in connection with Dagaru P.S. Case No. 157 of 2018 dated 05.08.2018 registered for the offences punishable under Sections 353 and 307 of the Indian Penal Code and Sections 8/20(b) (ii) (c) and 25 of NDPS Act.

4. As per the prosecution, the police personnel on secret information seized the alleged vehicle and apprehended this petitioner and upon search recovered in total 28 kg of contraband suspected to be '*Ganja*' from the alleged vehicle and

the apprehended person disclosed the names of other accused persons to be indulged in the smuggling of alleged contraband.

5. The main submissions advanced by learned counsel for petitioner are that the petitioner has fair and clean antecedent and the instant matter relates to the recovery of 28 kg of contraband believed to be '*Ganja*' and as per the prosecution, petitioner is alleged to be driver of the said vehicle and he was apprehended at the spot, infact the alleged contraband was not recovered from his conscious possession and petitioner is not owner of the alleged vehicle and he had no knowledge of the presence of the alleged contraband in the alleged vehicle when he was driving the same. Further submission is that co-accused Sandeep Singh has been granted bail by a co-ordinate bench of this Court vide order passed in Cr. Misc. No. 28447 of 2019 dated 06.05.2019 and the petitioner has been languishing in jail since 06.08.2018 and the charges were framed upon him on 11.09.2019 and thereafter four witnesses of prosecution were examined till 02.03.2020 and after that one more witness was also examined and in the present time out of total nine prosecution witnesses, five have been examined and prosecution is very slow in producing the witnesses and in concluding the trial of the petitioner. It is further submitted that though the

instant matter relates to the recovery of commercial quantity of narcotic material but in the light of the principles laid down by Hon'ble Apex Court in the judgment of Mohd. Muslim @ Hussain vs. State (NCT of Delhi) passed in Criminal Appeal No (S). of 2023 [@ Special Leave Petition (CRL.) No(S). 915 of 2023], the petitioner is entitled to be released on bail mainly on the ground of delay in concluding his trial. In support of said contention learned counsel for the petitioner has referred to paragraph nos. 21 to 24 of the said judgment which is being reproduced as under:

21. “Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31st December, 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069

lakhs in the country. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

22. The danger of unjust imprisonment, is that inmates are at risk of “prisonisation” a term described by the Kerala High Court in *A Convict Prisoner vs. State* as “a radical transformation” whereby the prisoner: “loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity and autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes.”

23. There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal” (also see Donald Clemmer’s ‘*The Prison Community*’ published in 1940). Incarceration has further deleterious effects – where the accused belongs to

the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The Courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.

24. For the above reasons, the appellant is directed to be enlarged on bail, subject to such conditions as the trial court may impose. The appeal is allowed, in the above terms. No costs.”

6. Learned APP for the State has opposed the bail prayer and submitted that the instant matter relates to the recovery of 28 kg of narcotic material suspected to be ‘*Ganja*’ from the possession of the petitioner and there is no material to show the petitioner’s innocence in the alleged recovery of said narcotic material and in the light of the provisions of Section 37 of NDPS Act, the petitioner is not entitled to the privilege of bail at this stage.

7. When the prayer of one who is accused of an offence punishable under NDPS Act and involving commercial quantity

of a narcotic material is to be decided in the light of the provisions of Section 37 of NDPS Act, then such prayer for bail can be accepted only when the Court concerned has reasonable ground to believe that such accused is not guilty of the alleged offence. When recovery of such contraband is made from the possession of accused, then in my opinion, it will be very difficult to form the opinion that the accused is not guilty of the alleged offence even if the accused has taken the defence that the mandatory provisions of search and seizure as envisaged in NDPS Act have not been complied by the officials who searched and seized the alleged contraband and investigated the alleged matter as all such violations are subject of trial and a proper adjudication can be made only after taking evidence of both the sides but if the said position is applied in every case involving commercial quantity of narcotic material then one will never be released on bail during trial despite the prosecution's lingering attitude to conclude the trial and the same will be against the constitutional right of the accused to get his trial to be concluded without unreasonable delay and in my opinion an accused is entitled to a liberal approach of the constitutional Court if he shows the following circumstances in his case when his prayer for bail is being decided that prosecution is very slow

in producing witnesses in his trial and lingering attitude appears on the part of prosecution, there is no allegation of non-cooperation by accused in his trial, any evidence or witness has not been tampered or influenced by him and most of the witnesses of the prosecution are official persons and he (accused) will not flee from the justice after bail.

8. Here it is important to mention that Hon'ble Apex Court in the case of Mohd. Muslim @ Hussain vs. State (NCT of Delhi) referred to above has observed that grant of bail on ground of undue delay in trial is not fettered by Section 37 as imperative of Section 436(A) of Code of Criminal Procedure Act requires inter alia the accused to be enlarged on bail if his trial is not concluded within specified period and it is further observed in the said judgment by Hon'ble Apex Court that laws which impose stringent conditions for grant of bail maybe necessary in public interest, yet if trials are not concluded in time, the injustice wrecked on the individual is immeasurable.

9. Considering the above discussed facts as well as submissions made by both the sides and mainly the custody period of the petitioner which has been more than four years and out of nine prosecution witnesses, only five witnesses have been examined till date which shows lingering attitude of the

prosecution in producing and examining the prosecution witnesses while most of the witnesses are official persons, the petitioner is stated to be the driver of the alleged vehicle from which the contraband was allegedly recovered and one co-accused is on bail as mentioned above, in my opinion as well as in the light of the principles laid down by the Hon’ble Apex Court in the above mentioned judgment, the petitioner is entitled to be released on bail. Accordingly, let the petitioner named above be enlarged on bail on furnishing bail bond of Rs. 20,000/- (Twenty Thousand) with two sureties of the like amount each to the satisfaction of concerned Court in connection with Dagarua P.S. Case No. 157 of 2018.

10. **Further on this condition that both the bailors must be local residents within the jurisdiction of the Trial Court, having sufficient immovable property to the satisfaction of the Trial Court.**

(Shailendra Singh, J)

Shahnawaz/-

AFR / NAFR	
CAV DATE	
Uploading Date	
Transmission Date	