

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.52330 of 2023

Arising Out of PS. Case No.-17 Year-2021 Thana- GOVERNMENT OFFICIAL COMP.
District- Patna

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Nagendra Rai S/o Jayram Rai R/o-Village-Jafrabad, P.S.-Raghopur, Dist-
Vaishali, Bihar.

... .. Petitioner/s

Versus

The Union of India through NCB, Patna, Bihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Surendra Kumar Singh, Advocate

For the Opposite Party/s : Mr. K.N. Singh (A.S.G.), Sr. Advocate

Mr. Awadesh Kumar, Senior Panel Counsel

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

4 13-10-2023 Heard Mr. Surendra Kumar Singh, learned counsel

appearing on behalf of the petitioner and Mr. Awadesh Kumar

Pandey, learned senior panel counsel of the Govt. of India.

2. This is the second attempt made by the petitioner
renewing his prayer for bail in connection with NDPS Case No.
22 of 2021, arising out of NCB Crime Case No. 17 of 2021,
registered for the offences under Sections 8(c) /20b(ii)(c), 25
and 29 of the Narcotics Drugs and Psychotropic Substances Act
(hereinafter referred to as ‘the NDPS Act’).

3. Earlier the prayer for bail of the petitioner was
negatived by taking into consideration the statement of the



petitioner as well as co-accused recorded under Section 67 of the NDPS Act, as also the materials which had led the NCB team to search and seize the Truck, in question, which resulted into recovery of 200.500 Kg of *Ganja*. It has also taken note of the fact that during the course of investigation, the petitioner and the co-accused persons were in touch with each other on their mobile.

4. Learned counsel appearing on behalf of the petitioner submits that from the materials available on record, it is admitted fact that the petitioner was neither accompanying the Narcotics nor he was apprehended nearby the place of occurrence. He further submits that the occurrence took place on 29.07.2021, on which date the entire recovery has been made and the apprehended accused persons have been remanded on 30.07.2021. Almost after 27 days, the petitioner has been summoned and in response thereto, he voluntary ensured his appearance before the NCB office, where his statement has been recorded under Section 67 of the NDPS, Act and thereafter, he was remanded in this case on 26.08.2021. He next submitted that save and accept statement of the petitioner as well as the co-accused person recorded under Section 67 of the NDPS, Act, there is nothing against the petitioner and thus, in view of the



judgment rendered by the Apex Court in the Case of ***Tofan Singh Vs. State of Tamil Nadu***, reported in ***(2021) 4 SCC 1***, the statement of the petitioner as well as others can not be termed as admissible evidence, justifying incarceration. There is no other material warranting his custody for such a long time. He further submits that the petitioner is in custody since 26.08.2021, and even after more than two years, out of seven charge-sheet witnesses, only one witness has been examined. He lastly submits that the petitioner is a man of fair antecedent and he undertakes that he will fully cooperate in the trial and remain present.

5. On the other hand, learned counsel for the Govt. of India, vehemently opposes the bail application and submits that earlier the case of the petitioner was considered on merits and after having found ample material against him, the same has been rejected and there is no cogent and overwhelming circumstances warranting reconsideration of his prayer, even in a short period of time, where the trial is going on. He lastly submits that the petitioner was one of the consignee of the contraband and co-accused Niraj Kumar confessed that he used to send money to the supplier at the behest of the father and maternal uncle (petitioner).



6. This Court has perused the materials and also heard the submissions advanced on behalf of the parties.

7. It is needless to observe that earlier the prayer of the petitioner has been rejected after taking note of the materials which has been discussed hereinabove, however, this is also the fact that the name of the petitioner has transpired on the confessional statement of the petitioner as well as the co-accused persons, recorded under Section 67 of the NDPS, Act which is not admissible in law, that apart till date, out of 7 charge-sheet witnesses, only one has been examined and as such no likelihood of the trial being concluded in near future.

8. 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.

9. 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 offences under Sections 19, 24 or 27A of the Act or offences involving commercial quantity, 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.

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

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**.

12. 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.”

13. This Court has also not lost sight of the limitations provided under Section 37 of the NDPS, Act but, the case in hand clearly suggest that the case of the petitioner is based only upon the statement of the petitioner/co-accused person under Section 67 of the NDPS, Act. In view thereof, considering the prolonged incarceration of the petitioner and the likelihood of trial being not concluded in near future, coupled with his fair antecedent, as also the mandate of Apex Court, as discussed hereinabove, let the petitioner abovenamed be released on bail on furnishing bail bonds of Rs. 50,000/- (fifty thousand) with two sureties of the like amount each to the satisfaction of the learned 1st Additional District & Sessions Judge, Begusarai in connection with NDPS Case No. 22 of 2021, arising out of NCB Crime Case No. 17 of 2021, 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)

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