

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51068 of 2023

Arising Out of PS. Case No.-629 Year-2021 Thana- TURKAULIYA District- East
Champaran

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Rupam Singh @ Chhotan Singh Son Of Nandkishore Singh @ Mukul Singh
Resident Of Village - Raghunathpur O.P., Distt. - East Champaran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Anuj Kumar

For the Opposite Party/s : Mr.Aditya Narayan Singh.1

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**CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH
SINGH**

ORAL ORDER

4 15-09-2023 Learned counsel for the petitioner is permitted to remove
defect (s), as pointed out by the office, if any, within a period of four
weeks.

2. Heard learned counsel for the petitioner and learned
A.P.P for the State.

3. The petitioner has preferred this application for grant of
regular bail in connection with Turkauliya P.S Case No. 629 of 2021
dated 11.08.2021 registered for the offences punishable under
Sections 25(1-B)(a), 26 and 35 of the Arms Act and Sections 8 and
20(b)(ii)(C) of the NDPS Act.

4. As per the prosecution case, one country-made pistol
with two live cartridges and 1.972 Kg of *Charas* were recovered
from the house of the petitioner during the course of raid.

5. Learned counsel for the petitioner has submitted that
the petitioner is innocent and has falsely been implicated in this case.



Nothing has been recovered from the conscious possession of the petitioner. The Seizure list has been prepared before the lodging of the FIR. Learned counsel has further submitted that the house from which the seized articles were recovered does not belong to the petitioner. Learned counsel further submitted that three out of nine witnesses have been examined. The petitioner is accused in six other criminal cases as stated in para 3 of the bail petition. Learned counsel has placed reliance on the judgement of Supreme Court in the case of **Rabi Prakash vs. The State of Odisha in Special Leave to Appeal (Crl.) No(s). 4169 of 2023** has held that *“As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three a half years in custody. The 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 counsel has further submitted that only 1 witness out of 19 witnesses was examined in the aforesaid case. Learned counsel has further submitted that in the case of **Mohd Muslim@ Hussain vs. State (NCT of Delhi) Special Leave**



Petition (CRL.)No(S). 915 of 2023, the petitioner remained in custody for over 7 years and one witness was examined and 34 witnesses were yet to be examined. The petitioner is in custody since 12.08.2021.

6. Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioner by submitting that earlier the bail of the petitioner was rejected by this Court *vide* order dated 10.10.2022 passed in Cr. Misc. No. 10561 of 2022. It is further submitted that the seized contraband is commercial quantity that is 1.972 Kg of *Charas* and the bar of Section 37 of the NDPS Act would apply in this case. Learned APP has further submitted that there is no prolonged incarceration and in the case of **Rabi Prakash vs. The State of Odisha in Special Leave to Appeal (Crl.) No(s). 4169 of 2023** there is no criminal case against the petitioner whereas this petitioner carries 6 criminal cases. Learned APP has further submitted that nothing on record which shows that the said house from which the said *Charas* was recovered, does not belong to the petitioner. Learned APP has further submitted that in the earlier bail application dated 10.10.2022 passed in Cr. Misc. No. 10561 of 2022 the petitioner suppressed the fact with regard to the criminal antecedent.

7. As per Section 37 of the N.D.P.S. Act, the two conditions are that the Court should be satisfied with :-

(i) There are reasonable grounds for believing that the accused is not guilty of such offence; and



(ii) He is not likely to commit any offence while on bail.

8. If either of these two conditions is not satisfied, the bar operates and the accused cannot be released on bail. This Court is of the opinion that the parameters of bail available under Section 37 of the Act have not satisfied in the facts of the instant case.

9. The Hon'ble Supreme Court in the case of *Narcotics Control Bureau v. Mohit Aggarwal 2022 SCC OnLine SC 891* has held that “*The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the N.D.P.S. Act.*”

10. Considering the aforesaid facts, circumstances and the recovery of commercial quantity of the seized contraband from the conscious possession of the petitioner, I am not inclined to enlarge this petitioner above-named on bail.

11. Learned Trial Court is further directed to expedite the trial and conclude the same preferably within a period of 9 months from the date of receipt of this order to the court concerned.

12. The bail petition stands rejected.

(Chandra Prakash Singh, J)

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