

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.19276 of 2024

Arising Out of PS. Case No.-75 Year-2021 Thana- SHERGHATI District- Gaya

Munna Singh, S/o- Surendra Kumar Singh @ Surendra Singh, R/o Village-
Masadh (Masarh) PS- Udwant Nagar Dist- Bhojpur.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

with
CRIMINAL MISCELLANEOUS No. 22731 of 2024

Arising Out of PS. Case No.-75 Year-2021 Thana- SHERGHATI District- Gaya

Mithilesh Paswan, S/o Late Mahesh Paswan, R/o Village- Harnath Kundi,
P.S.- Udwant Nagar (Udbant Nagar), Distt.- Bhojpur

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

(In CRIMINAL MISCELLANEOUS No. 19276 of 2024)

For the Petitioner/s : Mr. Anil Kumar Singh, Adv.

For the Opposite Party/s : Mr. Shailendra Kumar, APP

(In CRIMINAL MISCELLANEOUS No. 22731 of 2024)

For the Petitioner/s : Mr. Vijay Kumar Sinha, Adv.

For the Opposite Party/s : Mr. Narendra Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

3 10-05-2024 Heard the parties.

2. Since both the bail applications arise out of the same P.S. case, hence, with consent of the parties, they are being heard together and disposed of by a common order.

3. The petitioners seek regular bail, who is in custody in connection with N.D.P.S. Case No. 12 of 2021 arising out of



Sherghati (Dobhi) P.S. Case No. 75 of 2021 registered for the offences punishable under Sections 8, 20(b)(ii)(C), 25, 29 and 59(2) of the Narcotic Drugs and Psychotropic Substances Act (for short “the NDPS Act”).

4. The prosecution case as narrated in the FIR, in sum and substance, is that on a secret information of trafficking of *ganja*, a raiding team intercepted the Honda City vehicle and apprehended four persons. After interrogation, their statements were recorded under Section 67 of the N.D.P.S. Act. They disclosed that their consignment of *ganja* was coming from Orissa to Ara for a pick-up van bearing registration no. JH-01Z-0342. However, the said pick-up van was intercepted by the Excise Officials and the Excise Officials made a demand of Rs. 5 lac to release the pick-up van and, as such, they were going to Dobhi for getting the vehicle released.

5. On the afore-noted statement, the informant along with other officers raided the place where the pick-up van was kept confined and apprehended the constable/officials of excise department, who were allegedly demanding the bribe for release of the vehicle along with contraband. The raiding team also apprehended the driver and the *khalasi* of the said pick-up van and on search, total 253 Kg. of *ganja* was recovered.



6. It is submitted on behalf of the petitioner-Munna Singh (Cr. Misc. No. 19276 of 2024) that he was allegedly apprehended from the Honda City Car, which was said to be escorted the pick-up van; no recovery has been made, much less, no incriminating material from his person or possession. It is also contended that on search total cash of Rs. 63,050/- was recovered from all the four persons and, as such, the case of the prosecution that they were going to Dobhi for getting the release of pick-up van, in question after giving bribe of Rs. 5 lac gets demolished. It is also contended that during the course of investigation, no cogent material has come showing the complicity of the petitioner with the consignor of *ganja*. There is no call details record (CDR), showing the petitioner was in anyway connected with any person involved in trafficking of *ganja* or any contraband substance. The police, in fact, after seizure of the mobile phone of all the apprehended accused, called the driver of the pick-up van from the mobile of the petitioner in order to create material against him. Neither, the petitioner has any connection with the occupants of the pick-up van nor he has ever met to any Excise Officials to release the pick-up van.

7. It is submitted on behalf of the petitioner Mithilesh



Paswan (Cr. Misc. No. 22731 of 2024) that the he happens to be *khalasi* of the pick-up van in question, having no concern with the pick-up van nor with the alleged recovery of *ganja*. Moreover, the petitioner was not the regular *khalasi* of the pick-up van as he being resident of Udwant Nagar joined the vehicle on the same day when the vehicle reached at Udwant Nagar. There is no CDR or any money transaction showing complicity of the petitioner in anyway in the present crime. It is lastly contended that the entire case is based upon no evidence and, in fact, on the alleged date of occurrence, he was accompanying the driver without knowing any facts that some contraband had kept in the pick-up van and, unfortunately, he became the victim of circumstances.

8. Both the petitioners bear clean antecedent and are in custody for over a period of three years. Investigation of the crime has already completed and the charge-sheet has been submitted much earlier. Now, the charges have also been framed in this case on 29.07.2022 but there is no substantive progress in the trial and till date only two witnesses have been examined. Thus, there is no likelihood of the conclusion of the trial in near future and, as such, keeping the petitioners behind the bar would serve no further purpose, were also the submissions of the



petitioners.

9. On the other hand, learned APPs for the State, vehemently opposed the bail application and submitted that earlier twice the prayer for bail of the petitioners were rejected taking note of their active participation in the crime and the materials collected during the course of investigation. Huge quantity of *ganja* weighing 253 Kg. was recovered from the pick-up van, which was being escorted by the Honda City Car. The trial is going on and it is likely to be concluded in near future, if the accused persons will cooperate.

10. True it is that the knowledge of possession of contraband has to be gleaned from the facts and circumstances of a case and the term “possession” could mean not only physical possession, animus custody over the prohibited substance but also the animus exercise of dominion and control as a result of concealment or personal knowledge as to the existence of contraband and the intention based on such knowledge.

11. The afore-noted proposition has very well been clarified by the Hon’ble Apex Court in the cases of **Madan Lal and Another v. State of Himachal Pradesh [(2003) 7 SCC 465]** and **Dharampal Singh v. State of Punjab [2010 (9) SCC**



608].

12. It is also true that the finding of the absence or possession of contraband on the person of the accused person does not absolve it at the level of scrutiny required under Section 37(1)(b)(c) of the N.D.P.S. Act.

13. So far as Section 37 of the N.D.P.S. Act is concerned, it would not bar the release of the accused persons on bail. It only mandates that before release, the Public Prosecutor must be given an opportunity to oppose the application for such release and further the Court is to be satisfied that there is reasonable grounds for believing that he is not guilty of such offence and he is not likely to commit any offence while on bail.

14. Petitioner-Munna Singh (Cr. Misc. No. 19276 of 2024) was one of the occupants of Honda City Car, which is said to have been escorted the pick-up van and from his mobile there was call to the driver of the pick-up van, which was also detected during the course of investigation. Though, this fact has been refuted and explained by the petitioner that after being arrested by the police personnel, the call was made by the police officials to the driver of the pick-up van. Even for the sake of argument accept the call log, there is no other material e.g.



money transaction with the consignor and the action taken against the consignor or his connection with the petitioners.

15. So far petitioner-Mithilesh Paswan (Cr. Misc. No. 22731 of 2024) is concerned, during the course of investigation, all along it has come that he was *khalasi* in the said pick-up van and no incriminating material was collected during the course of investigation showing his involvement in the present crime.

16. Irrespective of the aforesaid facts, in relation to merit of the case, this Court cannot lose sight of the fact that the petitioners have been incarcerated for more than three years and till date, out of nine charge-sheet witnesses, as has been informed to this Court by the learned Trial Court that only two witnesses have been examined.

17. The law 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, is the mandate of the Hon'ble Supreme Court in the case of **Mohd Muslim @ Hussain v. State (NCT of Delhi) [2023 SCC OnLine SC 352]**.

18. In the case of **Hussainara Khatoon v. Home Secy., State of Bihar [(1980) 1 SCC 81]**, the Hon'ble Apex Court has held that Article 21 included within its ambit the right



to speedy trial and the procedure under which a person is deprived of personal liberty should be “reasonable, fair and just”.

19. At this juncture, this Court also thinks it apposite to note the observation made by the Hon’ble Supreme Court in the case of **Satendra Kumar Antil v. Central Bureau of Investigation and Another [(2021) 10 SCC 773]**, which is as follows:

“64. Now we shall come to category (C). We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigor imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigor as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigor, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter



compliance of Section 309 of the Code.”

20. Having conscious of the rigors stipulated under Section 37 of the NDPS Act, when the fundamental right of an accused person of speedy trial is at stake, the Statute or any Special Act should give weigh to the fundamental right as provided under the Constitution. In the opinion of this Court, keeping the petitioners behind the bar without providing a speedy trial would certainly deprive the personal liberty of a person.

21. In view of the discussions made hereinabove, especially taking note of the fact that the petitioners remained in custody for over three years and the chances of trial being concluded in near future is bleak, coupled with the fair antecedent, let the petitioners, named above, be released on bail on furnishing bail bonds of Rs.25,000/- (Twenty five thousand) each with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge-I, Gaya, in connection with N.D.P.S. Case No. 12 of 2021 arising out of Sherghati (Dobhi) P.S. Case No. 75 of 2021, subject to the condition that one of the bailors will be the family member(s) of the petitioners, who shall furnish their proper identification with their mobile phone with further conditions which are as



follows:-

- (i) The petitioners will cooperate in conclusion of the trial.
- (ii) They will remain present on each and every date of trial till disposal of the case.
- (iii) They will not try to tamper with the evidence or intimidate the witnesses to delay the disposal of trial.
- (iv) In the event of default of two consecutive dates without any cogent reason, their bail bonds will liable to be cancelled.

(Harish Kumar, J)

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