

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.19801 of 2024**

Arising Out of PS. Case No.-144 Year-2021 Thana- KADWA District- Katihar

Md. Afsar @ Md. Afsar Alam S/o Late Md. Mehruddin R/o Vill - Gethaura,
Ward No. 13, P.S. - Kadwa, Dist. - Katihar, Bihar

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. N.K. Agrawal, Sr. Adv. Mr. Bakshi SRP Singh, AC. Mr. Chakra Pani, AC Mr. Arvind Kumar, Adv. Mr. Kumar Rajdeep, Adv. Ms. Diksha Kumari, Adv.
For the Opposite Party/s	:	Mr. Jagdhar Prasad, APP

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 08-05-2024

Heard learned senior counsel for the petitioner with
assisting counsel and learned A.P.P. for the State.

2. The petitioner seeks regular bail in connection with
Kadwa P.S. Case No. 144 of 2021 arising out of G.R.
No.2365/2021, lodged on 20.06.2021 under Sections 8, 20(b)
(ii),C of the N.D.P.S. Act read with section 30(a) of Bihar
Prohibition & Excise Act.

3. Learned senior counsel for the petitioner submits
that the bail application of the petitioner was earlier rejected
vide order dated 14.10.2022 passed in Cr. Misc. No. 72502 of



2021 with liberty granted to the petitioner that he may renew his prayer for bail one year after framing of charge. Counsel submits that the charge has been framed in this case on 18.01.2023 and more than one year has been lapsed, so bail may be granted to the petitioner. Counsel also submits that the criminal antecedent of the petitioner is not clean and there are two criminal cases pending against him in which in both the cases, he is on bail. The petitioner is in custody since 21.06.2021 in the present case.

4. Learned APP for the State submits that a report has been called for in this case and from the said report which has been received by this Court *vide* Letter No.91/2024 from the Sessions Judge, Katihar, it transpires to this Court that the Sessions Judge has raised a legal issue in his report which states as follows:-

“5) On 26.06.2023, the Court of Exclusive Special Excise Court No.-2, Katihar split up the record in respect of offence u/s- 20(b)(ii), C of N.D.P.S Act from section 30(a) of Bihar Prohibition and Excise Act, 2016 and on 04.12.2023 transferred this record to this court for trial of accused for offence under section 20(b)(ii), C of N.D.P.S Act, 1985 stating that as per



section 84(1) of Bihar Excise Act, 2016 all Special Excise courts are exclusively designated for trial of offences under Excise Act only. Now trial for offences committed under Excise Act is being conducted in the Court of Exclusive Special Excise No.- 2, Katihar and trial for offences committed under N.D.P.S Act is being conducted in the Court of Sessions cum- Special Judge (NDPS Act), Katihar resulting into two separate trials creating multiplicity of trials for the parties.

6) In this regard, a letter no. 6092/2023 dated 23.12.2023 was sent seeking guideline from Hon'ble High Court of Judicature at Patna as to whether it would be proper that same accused person be tried by two different courts for committing offences covered by different Acts i.e offences under Excise Act be tried by the Exclusive Special Excise Court and Offences under N.D.P.S Act be tried by another court arising out of the same occurrence and P.S case number, whereas section 220(1) of Cr.P.C states that "If, in one series of act so connected together as to form the same transaction, more offences than one are



committed by the same person, he may be charged with, and tried at one trial for every such offence." It is further respectfully submitted that till date, this court has not received any guideline from the Hon'ble High Court and it is still awaiting."

5. After going through the request made in the said letter, this Court hereby request to other senior counsel Mr. Bakshi SRP Singh, Advocate and Mr. Chakra Pani, Advocate to assist on this issue. The legal question is that in the present case i.e. Kadwa P.S. Case No. 144 of 2021, offences under the Narcotic Drugs And Psychotropic Substances Act, 1985 as well as under Bihar Prohibition & Excise Act, 2016 are present and *vide* order dated 26.06.2023, the record has been split up. One for the court of Exclusive Special Excise Court and another for trial of N.D.P.S. Court. The Sessions Judge has raised issue that whether it would be proper that same accused person be tried by two different courts for committing offences covered by the different acts (N.D.P.S. Act, 1985 and Bihar Prohibition & Excise Act, 2016) arising out of the same occurrence and P.S case number, and arising out of one occurrence and one P.S particularly when section 220(1) of Cr.P.C. clearly states that



“If, in one series of act so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for every such offence.”

6. In this view of the matter and particularly with a view to answer this question, learned senior counsel for the petitioner submits that the relevant provisions of N.D.P.S. Act, 1985 and Bihar Prohibition & Excise Act, 2016 are necessary to be looked into. According to them, section 36-A (2) of the N.D.P.S. Act, 1985 and section 83 and 84(3) of Bihar Prohibition & Excise Act, 2016 are relevant which are as follows:-

Section 36-A (2) of the N.D.P.S. Act, 1985 states as:-

“When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.”

Section 83 of Bihar Prohibition & Excise Act, 2016 states as:-

“Notwithstanding anything contained in sub-section(1) of section 76 of this Act, all offences punishable under this Act



shall be tried by the Court of Sessions.”

Section 84(3) of Bihar Prohibition & Excise Act, 2016
states as:-

“The trial under this Act of any offence by the Special Court shall have precedence over the trial of any other case against the accused in any other Court (not being a Special Court) and shall be concluded in preference to the trial of such other case.”

In addition to that, the provisions of section 220(1) of the Cr.P.C is also important.

7. It transpires to this Court on the basis of arguments made by the senior counsels as well as counsel Mr. Chakra Pani that the most relevant section for answering this question is section 36-A (2) of N.D.P.S. Act, 1985 which clearly states that *when trying an offence under this act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.* Admittedly, the N.D.P.S. Act, 1985 is a central act and this subject comes within the purview of the List I- Union List (serial no.59) of the schedule 7 of the Constitution of India, whereas the Bihar Prohibition & Excise



Act, 2016 is the State act comes within the purview of the List II- State List (serial no.8) of the schedule 7 of the Constitution of India. Whereas, section 83 of the Bihar Prohibition & Excise Act, 2016 states that *Notwithstanding anything contained in sub-section(1) of section 76 of this Act, all offences punishable under this Act shall be tried by the Court of Sessions.* Here in the present case, the Court who is trying the N.D.P.S. is the Sessions Court. The legislative direction under the Bihar Prohibition & Excise Act is that the trial shall be conducted by the Court of Sessions.

8. Statement for deciding this issue is already laid down under section 36-A (2), where it has been stated by the law makers that Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial. The charges framed under the Bihar Prohibition & Excise Act, 2016 has been made according to the principles and guidelines made in the Code of Criminal Procedure, 1973 and therefore, according to the act, it is well within the power of the N.D.P.S. Court to conduct the trial for the offences under N.D.P.S. Act, 1985 as well as under the Bihar Prohibition & Excise Act, 2016. In the present case, due to the reason that the



accused has to be charged under Cr.P.C. at the same trial and therefore, instead of two different trials, one trial before the N.D.P.S. Court has to be continued.

9. Learned senior counsel Mr. N.K. Agrawal and Mr. Bakshi raised same voice that in the present situation, there should be one trial and it must be only and only before the N.D.P.S. Court as the N.D.P.S. Court is Sessions Court also.

10. Learned counsel Mr. Chakra Pani submits that for the purpose of deciding this issue, it is necessary to be looked into that N.D.P.S. Act, 1985 which is the Central act, whereas, the Bihar Prohibition & Excise Act, 2016 is the State act. Learned counsel Mr. Chakra Pani also supports the arguments made by the senior counsel Mr. Bakshi and Mr. N.K. Agrawal and submits that in the present case, the trial shall definitely to be taken before the N.D.P.S. Court only.

11. Here in the present case, the discussion takes place only the situation relating to one State Act with Central Act for the present the Bihar Prohibition & Excise Act, 2016 and N.D.P.S. Act, 1985. On the basis of the discussion, this Court is hereby answering only one question which has been placed before this Court in the report by the Sessions Court, Katihar on which the assistance has been provided by senior counsel and



advocate being *amicus curie*. This Court fully agrees on the issue as answered by senior counsel Mr. Bakshi that there shall be no two trials for one FIR even if, there are two different offences i.e. one under Bihar Prohibition & Excise Act, 2016 and another under N.D.P.S. Act, 1985 and hence, this answer accordingly.

12. This court is thankful to learned Senior Advocate Mr. Bakshi S.R.P. Singh, Mr. N.K. Agrawal and Advocate Mr. Chakra Pani to assist on the issue which has been arisen at the time of passing order in this Court and this Court hereby grants special thanks to them to save the time of the Court in deciding this issue.

13. So far as the merit of this case is concerned, this Court hereby grants bail to the petitioner on furnishing bail bonds of Rs.30,000/- (Rupees Thirty thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge, Katihar in connection with Kadwa P.S. Case No. 144 of 2021 arising out of G.R. No.2365/2021, subject to the conditions as laid down U/s 437(3) Cr.P.C. as well as the following conditions:

(i) one of the bailor should be the family member of the petitioner who shall provide official document to show his



bona fide;

(ii) the petitioner shall appear on each and every date before the Trial Court and failure to do so for two consecutive dates without plausible reason will entail cancellation of his bail bonds by the Trial Court itself;

(iii) the petitioner shall appear before the concerned police station every month for one year to mark attendance;

(iv) the petitioner shall in no way try to induce or promise or threat the witnesses or tamper with the evidence, failing which the State shall be at liberty to take steps for cancellation of the bail bonds; and

(v) the petitioner shall desist from committing any criminal offence again, failing which the State shall be at liberty to take steps for cancellation of the bail bonds.

14. However, the petitioner shall be granted bail only on being satisfied by the Trial Court that the petitioner is not absconding in any of the cases pending against him whose details are as follows:-

(I)- Katihar Rail P.S. Case No. 1 of 2011.

(II)- Katihar Mahila P.S. Case No. 87 of 2016.

15. After passing the order of disposal in this case, I find, there are questions necessary to be answered with a view



to find solution to problem which has arisen *ad-nauseam* before the Trial Court. Therefore, it is essential to be tested by the Larger Bench for which reference is necessary to be framed which are as follows:-

“The Trial of a criminal case has to be conducted before which Court?

(a) When, the said criminal case has been lodged under two or more offences, which come under different Central Acts for which two or more different Special Courts assigned for trial under statutes.

(b) When, the said criminal case has been lodged under two or more offences which comes under one or more Central act and one or more State act having two or more different Special Courts assigned for trial under statutes.

(c) When, the said criminal case has been lodged under two or more offences which come under I.P.C. and Special Acts having different situations viz.,

(i) offences of I.P.C. provides higher punishment and Special Act provides lower punishment

(For example:- a case under section 420 of the I.P.C. for which warrant trial prescribed with section 7 of the E.C. Act



for which summary trial prescribed under law.

(ii) section 302 of the I.P.C. for which Sessions Trial provided with offences under Excise Act for which Special trial provided.

(iii) offences under I.P.C., Excise Act and E.C. Act (special law special trial)

(iv) offences under section 420 I.P.C. for which warrant trial provided with offences of section 138 of N.I. Act for which summary trial provided.

16. This Court hereby refers this matter humbly before Hon’ble the Chief Justice to constitute Larger Bench for answering the reference to provide guidelines for the Trial Courts.

(Dr. Anshuman, J.)

Divyansh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16.05.2024
Transmission Date	16.05.2024

