

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23592 of 2023

Arising Out of PS. Case No.-478 Year-2020 Thana- PHULWARISHARIF District- Patna

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Md. Mansoor @ Mansoor Alam @ Nawab, aged about 32 years, (Male), Son
Of Mahboob Alam, resident of Naya Tola, Madina Gali, P.S.- Phulwari Sharif,
District- Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Prashant Kashyap, Advocate
Mr. Rakesh Chandra Varun, Advocate
For the State : Mr. Ajit Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

5 20-07-2024 Heard Mr. Prashant Kashyap, learned counsel
appearing on behalf of the petitioner and Mr. Ajit Kumar,
learned A.P.P. for the State.

2. Petitioner, who is in custody since 02.09.2022,
seeks regular bail in connection with Special Case No. 130 of
2020 arising out of Phulwarisharif P.S. Case No. 478 of 2020
registered for offences punishable under Sections 20 and 22 of
the N.D.P.S. Act. The cognizance was taken under Sections 21
and 27 of the N.D.P.S. Act.

3. Learned counsel appearing on behalf of the



petitioner submits that in respect of offence committed under the provision of the Narcotic Drugs and Psychotropic Substances Act, 1985, the Hon'ble Supreme Court, in case of ***Ravi Prakash Vs. The State of Odisha*** reported in ***2013 LiveLaw (SC) 533***, after observing the period of custody to be three and a half years spent by the appellant of the said case and taking into consideration the pace of trial, found that the precious Fundamental Right granted under Article 21 of the Constitution, in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the N.D.P.S. Act and the Hon'ble Supreme Court was pleased to grant the concession of bail to the appellant of the said case.

4. Learned counsel appearing on behalf of the petitioner informs that the petitioner is in custody since 02.09.2022 and submits that the petitioner may be considered to be released on regular bail, taking into consideration the observation made in paragraph no. 4 in case of ***Ravi Prakash (Supra)*** by the Apex Court, as well as, the report in respect of the stage of trial, which was received on 10.01.2024, in which, it has been informed that till that date, one witness was examined out of six witnesses.

5. I am of the opinion that before considering to grant



regular bail to the petitioner, a report is required from the District Court in respect of the stage of trial, as already one witness out of six witnesses, was examined.

6. At this stage, learned counsel for the petitioner submits that the matter may be disposed of to be considered by the learned District Court and petitioner seeks liberty to file a fresh regular bail application before the learned District Court for considering his regular bail application in light of the observation made by the Apex Court in paragraph no. 4 of the ***Ravi Prakash (Supra)***, which is reproduced hereinafter:

"4. 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 and 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."

7. Considering the aforesaid submission, as well as, the period of custody of the petitioner, I find it proper that the petitioner may avail appropriate remedy for considering his claim for bail in light of the observation made by the Apex Court in paragraph no. 4 of the judgment passed in ***Ravi Prakash (Supra)***.

8. With the aforesaid observation, the present bail



application is disposed of.

(Purnendu Singh, J)

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