

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34878 of 2024

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

Somnath Mahto @ Somnath Singh S/o Ram Kishor Mahto R/o Village
Masadh Masarh PS Udwant Nagar District Bhojpur Bihar

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Union of India through Economic Offence Unit, Bihar, Patna Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Ravi Kant Kumar, Advocate
For the State	:	Mr. Shyam Kumar Singh, APP
For the EOU	:	Mr. Vishwanath Prasad Sinha, Sr. Advocate with Mr. Vijay Anand, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

4 23-08-2024 Heard Mr. Ravi Kant Kumar, learned Advocate for the

petitioner and Mr. Vishwanath Prasad Sinha, learned Senior

Advocate along with Mr. Vijay Anand, learned Advocate for the

Economic Office Unit.

2. The petitioner seeks grant of regular bail in
connection with Special NDPS Case No. 12 of 2021, arising out
of Sherghati P.S. Case No. 75 of 2021, registered for the
offences punishable under Sections 8/20(b)(ii)(C)25/29/59(2) of
the Narcotic Drugs and Psychotropic Substances Act, 1985.

3. This is the third attempt made on behalf of the
petitioner for grant of bail, as earlier the prayer for bail of the
petitioner was turned down by this Court in Cr. Misc. No. 69239



of 2021 vide order dated 17.10.2022 and in Cr. Misc. No. 54188 of 2023 vide order dated 06.10.2023; having taken into consideration the materials available on record disclosing the fact that the pick-up van in question laden with huge quantity of *ganja* weighing 253 Kgs. was recovered on the disclosure and at the instance of the petitioner. The petitioner is said to be one of the person who escorted the pick-up van right from Orissa to Ara and he was found sitting along with three other persons in Honda City Car. The Court while rejecting the bail petition had also considered the mandate of the Apex Court as well as the narrow parameters of bail available under Section 37 of the NDPS Act.

4. Learned Advocate for the petitioner contended that admittedly the prayer of the petitioner was turned down by this Court after considering the materials available on record. However, at the cost of repetition he contended that this fact cannot be belied that no incriminating article has been recovered from the possession of the petitioner. During the course of investigation, the prosecution has not come out with any material disclosing the complicity of the petitioner with the accused persons, who were found in actual possession of *ganja*. There is no call details record showing the involvement of the



petitioner with any person involved in trafficking of contraband substance; apart from the fact, the petitioner bears fair antecedent. Learned Advocate for the petitioner also apprised this Court that the persons who were sitting in the Honda City Car along with the petitioner, they have been allowed privilege of bail by this Court in Cr. Misc. No. 19276 of 2024 and Cr. Misc. No. 22731 of 2024 vide order dated 10.05.2024, copy of which is produced before this Court and taken on record. It is also contended that taking note of the aforesaid order and basing his claim on parity one another accused person also approached before this Court in Cr. Misc. No. 43444 of 2024 (Niraj Singh @ Tutu vs. The State of Bihar & Anr.), who has also been allowed bail by this Court vide order dated 27.07.2024. It is lastly contended that despite having spent a long period of incarceration, till date out of 9 chargesheet witnesses, only two witnesses have been examined. There is no likelihood of conclusion of the trial in near future and moreover the case of the petitioner is based on parity.

5. On the other hand, learned Senior Advocate for the Economic Offence Unit vehemently opposed the bail application and submitted that apart from the fact that the prayer for bail of the petitioner has already been negated by this Court



twice on merit, this fact cannot be ignored that the petitioner was found indulge in trafficking of huge quantity of *ganja* weighing more than 253 Kgs. There are materials available on record suggesting the complicity of the petitioner along with other accused persons and the trial is still going on.

6. This Court, while considering the prayer for bail of the co-accused persons, who were found engaged in escorting the pick up van laden with *ganja*, having taken note of the mandate of the Apex Court, has observed in its order dated 10.05.2024 passed in Cr. Misc. No. 19276 of 2024 as follows:

“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.”

7. After having considered the entire facts and the mandate of law, this Court finds that the case of the petitioner is based on parity and now he has been incarcerated for over a period of three years and six months and there is no likelihood of conclusion of trial in near future; moreover till date out of 9 chargesheet witnesses, only two of them have been examined, coupled with the fair antecedent, let the petitioner, named above, be released on bail on furnishing bail bonds of Rs.25,000/- (Twenty five thousand) with two sureties of the like amount each to the satisfaction of learned Additional District and Sessions Judge 1st, Gaya, in connection with Special Case N.D.P.S. Case No. 12 of 2021, arising out of Sherghati P.S. Case No. 75 of 2021, subject to the condition that both the bailors will be the family member(s) of the petitioner, who shall furnish



their proper identification with their mobile phone with further conditions which are as follows:-

- (i) The petitioner will cooperate in conclusion of the trial.
- (ii) He will remain present on each and every date of trial till disposal of the case.
- (iii) He 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, his bail bonds will liable to be cancelled.
- (v) The court below shall verify the criminal antecedent of the petitioner and in case, at any stage, it is found that the petitioner has concealed his criminal antecedent, the court below shall take immediate step for cancelling the bail bonds of the petitioner. However, the acceptance of bail bonds, in terms of the above-mentioned order, shall not be delayed for this purpose or in the name of verification.

(Harish Kumar, J)

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