

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42392 of 2024

Arising Out of PS. Case No.-5 Year-2021 Thana- D.R.I District- Patna

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Jagdish Kumar S/O Murli Rai R/O Ward No.-5, Rajasan, P.S- Bidupur, Distt.-
Vaishali, Bihar.

... .. Petitioner/s

Versus

The Union Of India through Deputy Director, Directorate of Revenue
Intelligence, Patna, Bihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Yogesh Chandra Verma, Sr. Advocate
Mr. Ganesh Prasad Singh, Advocate
For the Opposite Party/s : Mr. Anshuman Singh, Sr. SC, DRI

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

7 03-12-2024 Heard Mr. Yogesh Chandra Verma, learned Senior

counsel for the petitioner assisted by Mr. Ganesh Prasad Singh
and Mr. Anshuman Singh, learned Senior Standing Counsel for
the DRI.

2. Petitioner seeks bail, who is in custody since
21.09.2021, in connection with Special (NDPS) Case No. 133 of
2021 arising out of DRI P.S. Case No. 05 of 2021, dated
21.09.2021 registered for the offences punishable under
Sections 20, 25 and 29 of NDPS Act.

3. The case relates to recovery of 382.50 Kgs. of
Ganja.



4. Learned Senior counsel for the petitioner submits that earlier the bail petition of the petitioner was rejected vide order dated 27.07.2023 in Cr. Misc. No. 10348 of 2023 and the petitioner is in custody since 21.09.2021 and the trial is not in progress.

5. Learned Senior counsel for the petitioner has relied upon a judgment/order dated 26.04.2024 passed in Cr. Misc. No. 60694 of 2023 by which the Court after considering all the aspects has enlarged on bail on the ground of delay in trial. Learned counsel for the petitioner has also relied upon a judgment of the Hon'ble Apex Court in the case of **MOHD MUSLIM @ HUSSAIN Vs. STATE (NCT OF DELHI)** passed in **Special Leave Petition (CRL) NO(S). 915 of 2023** by order dated 28.03.2023, paragraph Nos. **12, 13, 14, 15 and 16** of the said order, which reads as follows:-

12. This court has to, therefore, consider the appellant's claim for bail, within the framework of the NDPS Act, especially Section 37. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India [(1994) 6 SCC 731], this court made certain crucial observations, which have a bearing on the present



case while dealing with denial of bail to those accused of offences under the NDPS Act:

"On account of the strict language of the said provision very few persons accused of certain offences under the Act could secure bail. Now to refuse bail on the one hand and to delay trial of cases on the other is clearly unfair and unreasonable and contrary to the spirit of Section 36(1) of the Act, Section 309 of the Code and Articles 14, 19 and 21 of the Constitution. We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed we have adverted to this section in the earlier part of the judgment. We have also kept in mind the interpretation placed on a similar provision in Section 20 of the TADA Act by the Constitution Bench in Kartar Singh v. State of Punjab ((1994) 3 SCC 569]. Despite this provision, we have



directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as held by a Constitution Bench of this Court in A.R. Antulay v. R.S. Nayak [(1992) 1 SCC 225], release on bail, which can be taken to be embedded in the right of speedy trial, may, in some cases be the demand of Article 21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the



fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters."

13. When provisions of law curtail the right of an accused to secure bail, and correspondingly fetter judicial discretion (like Section 37 of the NDPS Act, in the present case), this court has upheld them for conflating two competing values, i.e., the right of the accused to enjoy freedom, based on the presumption of innocence, and societal interest-as observed in *Vaman Narain Ghiya v. State of Rajasthan* [(2009) 2 SCC 281] ("the concept of bail emerges from the conflict



between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal...."). They are, at the same time, upheld on the condition that the trial is concluded expeditiously. The Constitution Bench in *Kartar Singh v. State of Punjab* [(1994) 3 SCC 569] made observations to this effect. In *Shaheen Welfare Association v. Union of India* [(1996) 2 SCC 616] again, this court expressed the same sentiment, namely that when stringent provisions are enacted, curtailing the provisions of bail, and restricting judicial discretion, it is on the basis that investigation and trials would be concluded swiftly. The court said that Parliamentary intervention is based on:

"a conscious decision has been taken by the legislature to sacrifice to some extent, the personal liberty of an undertrial accused for the sake of protecting the community and the nation against terrorist and disruptive activities or other



activities harmful to society, it is all the more necessary that investigation of such crimes is done efficiently and an adequate number of Designated Courts are set up to bring to book persons accused of such serious crimes. This is the only way in which society can be protected against harmful activities. This would also ensure that persons ultimately found innocent are not unnecessarily kept in jail for long periods."

14. In a recent decision, while considering bail under the Unlawful Activities Act (Prevention) Act, 1967, this court in *Union of India v. K. A. Najeeb* [(2021) 3 SCC 713] observed that:

"12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act") which too have



somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi), (1999) 9 SCC 252/ Babha v. State of Maharashtra, (2005) 11 SCC 569 and Umarmia v. State of Gujarat, (2017) 2 SCC 731 enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians."

The court concluded that statutory restrictions like Section 43-D(5) of the UAPA, cannot fetter a constitutional court's ability to grant bail on ground of violation of fundamental rights.

15. Even in the judgment reported as *Vijay Madanlal Chaudhary v. Union of India* [2022 SCC



Online SC 929] this court while considering bail conditions under the Prevention of Money Laundering Act, 2002, held that:

"If the Parliament/Legislature provides for stringent provision of no bail, unless the stringent conditions are fulfilled, it is the bounden duty of the State to ensure that such trials get precedence and are concluded within a reasonable time, at least before the accused undergoes detention for a period extending up to one-half of the maximum period of imprisonment specified for the concerned offence by law."

16. In the most recent decision, *Satender Kumar Antil v. Central Bureau of Investigation* [(2022) 10 SCC 51] prolonged incarceration and inordinate delay engaged the attention of the court, which considered the correct approach towards bail, with respect to several enactments, including Section 37 NDPS Act. The court



expressed the opinion that Section 436A (which requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973 would apply:

“We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigour 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 rigour, 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.”

6. The fact of the prosecution case is that the petitioner was apprehended from the Wagon-R car which was coming from the back side of the truck in question and it appears from the F.I.R. as well as seizure list that recovery has been made from the truck in question and altogether 382.50 Kgs. of *ganja* has been recovered from the truck in question and nothing has been recovered from the conscious possession or the vehicle of the petitioner.

7. Vide order dated 20.09.2024 a report was called for with regard to the stage of the trial. The report of the learned trial court dated 16.10.2024 reveals that out of ten chargesheeted witnesses, only three witness have been examined.



8. Learned counsel for the petitioner referring the aforesaid report of the learned Trial court submits that in view of the report of the learned Trial Court, there is no chance of early conclusion of the trial in near future and the petitioner is in custody since 20.09.2021.

9. Learned counsel for the DRI (Union of India) vehemently opposed the prayer for bail of the petitioner and submits that there is no embargo of NDPS cases to enlarge the petitioner on bail. Learned counsel for the DRI has relied upon a judgment of the Hon'ble Supreme Court in the case of **STATE BY THE INSPECTOR OF POLICE VS. B. RAMU** passed in **SLP (Cri) No (s). 8137 of 2022**, referring paragraph nos. 8, 9 and 10. He further relied upon a judgement/order dated 11.04.2023 passed in *Cr. Misc. No. 53381 of 2022 (Chandan Kumar Vs. Union of India through Customs (Preventive), Patna, Bihar*. He further submits that the recovered contraband is more than the commercial quantity and hence there is embargo under Section 37 of the NDPS Act but fairly submits as per report of the learned Trial court that till date only three prosecution witnesses have been examined and the petitioner is in custody since 21.09.2021. He further submits that the petitioner carries one more case other than the present one but



fairly submits on the basis of paragraph-3 of the bail petition that the petitioner is on bail in the pending matter.

10. Considering the aforesaid facts and circumstances of the case as well as the order of the Hon'ble Supreme Court in the case of **MOHD MUSLIM @ HUSSAIN Vs. STATE (NCT OF DELHI)** passed in **Special Leave Petition (CRL) NO(S). 915 of 2023** and the petitioner is in custody since 21.09.2021 as well as the report of the learned Trial court, let the petitioner, above named, be released on bail on furnishing bail bond of Rs. 50,000/- (Rupees Fifty Thousand) with two sureties of the like amount each to the satisfaction of learned Exclusive Special Judge (NDPS Act), Court No.-1, Patna in connection with Special (NDPS) Case No. 133 of 2021 arising out of DRI P.S. Case No. 05 of 2021, subject to the following conditions :-

(1) Petitioner shall co-operate in the trial and shall be properly represented on each and every date fixed by the Court and shall remain physically present as directed by the Court and on his absence on two consecutive dates without sufficient reason, his bail bond shall be cancelled by the Court below.

(2) If the petitioner tampers with the evidence or the witness, in that case, the prosecution will be at liberty to move for cancellation of bail.



(3) And, further condition that 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 antecedents, the court below shall take step for cancellation of bail bond of the petitioner. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

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(Rajesh Kumar Verma, J)

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