

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.43444 of 2024

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

Niraj Singh @ Tutu, son of Gupteshwar Singh, resident of Village- Masadh,
P.S.- Udwant Nagar, Dist- Bhojpur

... .. Petitioner/s

Versus

1. The State of Bihar
2. Economic Offences Unit, Bihar, Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Abhishek Kumar, Advocate

For the Opposite Party/s : Mr. Vishwanath Pd. Sinha, APP

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

2 20-07-2024 Heard the parties.

2. The petitioner seeks 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”).

3. This is the second attempt on behalf of the petitioner for grant of bail. Earlier the prayer of the petitioner for grant of bail was negatived by this Court in Cr. Misc. No. 64463 of 2021 vide order dated 17.10.2022 taking into consideration the materials available on record that the pick-up van, in question, laden with huge quantity of Ganja was recovered on the disclosure and at the instance of the



petitioners, who were said to be escorted the pick-up van right from Orissa to Ara and moreover the Driver and Khalasi having categorically identified the four persons, including the petitioner.

4. Learned Advocate for the petitioner contended that though the prayer of the petitioner was turned down by this Court on the merit of this case. However, at the cost of repetition, it is further submitted that no incriminating article has been recovered from the possession of the petitioner establishing his complicity in the present crime. In the entire investigation, the prosecution has failed to disclose any material. Moreover, there is no call detail records showing the petitioner in any way connected with any person involved in trafficking of contraband substance. The petitioner bears fair antecedent and now he has been incarcerated in judicial custody since 04.02.2021.

5. Learned Advocate for the petitioner further contended that the persons, who were also found sitting in Honda City car along with the petitioner, they have been allowed the 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, the copy of which is marked as Annexure-



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6. It is lastly contended that despite having spent a long period of incarceration, till date out of 9 charge-sheet witnesses, only two witnesses have been examined. There is no likelihood of conclusion of trial in near future. The case of the petitioner is based on parity.

7. On the other hand, learned Advocate for the State, vehemently opposed the bail application and submitted that earlier the prayer for bail of the petitioner has already been rejected taking into account the complicity of the petitioner in the crime. There is no overwhelming circumstances to reconsider the prayer for grant of bail of the petitioner.

8. This Court while considering the prayer for bail of the co-accused, having identical allegation, in its order dated 10.05.2024 passed in Cr. Misc. No. 19276 of 2024 has observed 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.”

9. Considering the fact that the case of the petitioner is based on parity and moreover the petitioner has been incarcerated for over a period of three years and five months and there is no likelihood of conclusion of trial in near future; till date out of 9 charge-sheet witnesses, only two witnesses 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 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 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.

(Harish Kumar, J)

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