

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55014 of 2024

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

Suraj Paswan, Son of Shiv Jee Paswan, R/O- Harmath Kundi @ Harnath Kundi , P.S.- Udwant Nagar, Distt.- Bhojpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

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

For the Opposite Party/s : Mr. Harendra Prasad, APP

For the EOU : Mr. Vishwanath Prasad Singh, Sr. Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

2 20-09-2024 Heard Mr. Abhishek Kumar, learned Advocate for the petitioner and Mr. Vishwanath Prasad Singh, learned Senior Advocate for the Economic Offence Unit.

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. On a tip off trafficking of *Ganja*, a raiding team intercepted the Honda City vehicle and apprehended four persons. After interrogation, their statements were recorded under Section 67 of the N.D.P.S. Act. They accepted that their consignment of *Ganja* was coming from Orissa to Ara for a



pick-up van bearing registration no. JH-01Z-0342. The petitioner is said to be the driver of the aforementioned pick-up van.

4. Learned Advocate for the petitioner contended that the petitioner being the driver of the Pick-up van was not knowing the fact as to what materials are being carried by the consigner and consignee Moreover, after completion of the investigation, the police submitted charge-sheet and thereafter charges have also been framed on 29.07.2022. Irrespective of the aforesaid fact, till date out of nine charge-sheet witnesses, only two witnesses have been examined in the case and now the petitioner has been incarcerated since three years and seven months. It is also the contention of the learned Advocate that other co-accused persons, who were either escorting the Pick-up van or sitting in the Pick-up van, they have been allowed the privilege of regular 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 petitioner bears fair antecedent and he undertakes that he will fully cooperate in the proceeding of the court.

5. On the other hand, learned Senior Advocate for the Economic Offence Unit vehemently opposed the bail application and submitted that the petitioner was carrying a



huge quantity of *ganja* weighing 253 Kg and there are cogent material suggesting the involvement of the petitioner in the crime. Moreover, the petitioner is not able to satisfy the rigors provided under Section 37 of the NDPS Act and, as such, release of the petitioner would not only in contravention of Section 35 of the NDPS Act, but also hamper the entire trial.

6. Regard being had to the submissions made on behalf of the parties and considering the fact that co-accused persons, who were also found seated in the Pick-up van, have been granted bail by this Court taking note of the judgment rendered by the Apex Court. It would be proper to quote some of the paragraphs of order dated 10.05.2024 passed in Cr. Misc. No. 19276 of 2024 and Cr. Misc. No. 22731 of 2024 by which the co-accused persons, having identical allegation, have been granted bail.

“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. 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.

8. In view of the fact that the petitioner has been incarcerated for three years and seven months and till date there is no likelihood of conclusion of trial in near future, this Court finds that the petitioner has made out a case for grant of bail.



9. 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 P.S. Case No. 75 of 2021, subject to the condition that one of the bailors will be the family member(s) of the petitioner, who shall furnish his 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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