

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.53995 of 2024

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

Santosh Paswan, Son of Subhas Paswan, R/O- Masadh, P.S.-Udwant Nagar ,
Distt.-Bhojpur

... .. Petitioner/s

Versus

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

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Abhishek Kumar, Adv.
For the Opposite Party/s	:	Mr. Harendra Prasad, Adv.
For Economic Offence Unit	:	Mr. Vishwanath Prasad Sinha, Adv. Mrs. Soni Srivastava, Adv.

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL ORDER

2 11-09-2024 Heard learned Advocate appearing on behalf of the

petitioner and the learned Additional Public Prosecutor for the

State.

2. The application for grant of bail to the petitioner who is in custody in connection with Sherghati (Dobhi) P.S. Case No. 75 of 2021, corresponding to N.D.P.S. Case No. 12 of 2021 registered for the offences punishable under Sections 8, 20(b)(ii)(c), 25, 29, 59(2) of the Narcotics Drugs and Psychotropic Substance Act.

3. Allegedly this is the second attempt made on behalf of the petitioner, as earlier the prayer for bail of the petitioner was turned down vide order dated 17.10.2022 in Cr. Misc. No. 67914 of 2021 with other analogous cases, taking note of the



fact that the petitioner is alleged to be driver of the Honda City vehicle who was apprehended alongwith other accused persons while they were escorting the pick up van in question, from where a huge amount of contraband being 253 kg of ganja was recovered.

4. Learned Advocate appearing on behalf of the petitioner contended that he is conscious of the fact that earlier the prayer for bail of the petitioner was rejected on merit however, this fact cannot be ignored that no recovery has been made from the Honda City car, which was being driven by the petitioner, save and except the fact that the petitioner being driver of the Honda City car, there is no allegation with regard to complicity of the petitioner in the crime. There is neither any call detail records showing the petitioner in any way connected with the persons involved in trafficking of such contraband substance, nor any money transaction has been done.

5. Learned Advocate for the petitioner further contended that the charges have already been framed against all the accused persons including this petitioner way back on 29.07.2022 however, till date out of nine chargesheet witnesses only two witnesses have been examined, thus, there is no likelihood of conclusion of the trial in near future. Moreover, the



petitioner has been incarcerated since 04.02.2021. It is lastly contended that other co-accused persons were also apprehended by the police while escorting the pick up van through the Honda City car, they have been allowed bail by this Court in Cr. Misc. No. 19276 of 2024 and 22731 of 2024, vide order dated 10.05.2024, after taking into consideration the period of incarceration and a bleak chance of trial being concluded in near future, the copy of which has been brought on record as Annexure P/3.

6. On the other hand, learned Senior Advocate representing the Economic Offence Unit vehemently opposed the bail application and submits that cogent material has come during the course of investigation suggesting the complicity of the petitioner in crime, wherein a huge quantity of ganja weighing more than 250kg of ganja was recovered. It is also contended that since the trial is going on, the release of the petitioner would hamper the trial, moreover, the twin principles as required under Section 37 of the N.D.P.S. Act is also not satisfied, in as much as, there is no reasonable ground for believing that he is not guilty of such offence.

7. This Court has given anxious consideration to the submissions advanced on behalf of learned Advocate for the



parties. While granting bail to the other co-accused persons having identical allegation, this Court after taking note of the mandate of the Apex Court has observed as follows:-

“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 the 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.”

8. Regard being had to the submissions made on behalf of the parties and considering the discussions made hereinabove, specially taking note of the fact that the petitioner remained in custody for over a period of 3 years 6 months and the chance of trial being concluded in near future is quite bleak, coupled with the fair antecedent and the fact that other co-accused persons having identical allegation have been allowed bail by this Court, let the petitioner, named above, be released on bail on furnishing bail bonds of Rs. 25,000/- (Rupees twenty five thousand) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge 1st, Gaya in connection with Sherghati P.S. Case No. 75 of 2021 corresponding to N.D.P.S. Case No. 12 of 2021, subject to the condition that one of the bailors will be the close relatives of the petitioner 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 bond 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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