

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.64015 of 2021

Arising Out of PS. Case No.-10 Year-2021 Thana- GOVERNMENT OFFICIAL COMP.
District- Aurangabad

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SANI YADAV, Son of Sanjay Yadav, Resident of Village- Chakki, P.S.-
Brahmpur, Distt.- Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Union of India, through Intelligence Officer, Narcotics Control Bureau,
Patna. Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Rajeev Ranjan, Advocate Mr. Manish Rai Sharma, Advocate
For the Opposite Party/s	:	Mr. Yogendra Kumar Singh, APP
For the NCB	:	Mr. Ram Anurag Singh, CGC

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

12 11-09-2024 Heard Mr. Rajeev Ranjan, learned Advocate for the

petitioner and Mr. Ram Anurag Singh, learned Advocate for the

Union of India. Learned Advocate for the State is also present.

2. The petitioner seeks regular bail, who is in custody
in connection with NCB Case No. 10 of 2021 registered for the
offences punishable under Sections 8(c), 20(b)(ii)(c), 29 of the
Narcotic Drugs and Psychotropic Substances Act, 1985
(hereinafter referred to as ‘the NDPS Act’).

3. Based upon the written report, the prosecution
alleges that the police on a tip of trafficking of Narcotic
substance, conducted raid at New Gurudev Basera Hotel, Jogia



and apprehended three persons, including the petitioner, who are having three plastic bags. On search, altogether 112.20 Kg of Ganja like substance was recovered.

4. There is total denial of the recovery from the possession of the petitioner.

5. Drawing the attention of this Court to the seizure list, learned Advocate for the petitioner thus submitted that the recovery is said to have been made from the New Gurudeo Basera Hotel, Jogia and thus there is serious contradiction in place of seizure. There is non-compliance of the mandatory provisions, inasmuch as Sections 42 and 50 of the NDPS Act has been given go-bye. It is next contended that co-accused Ravi Ranjan, who is having identical allegation, has been accorded the privilege of regular bail in Cr. Misc. No. 35866 of 2024 by taking into consideration the period of incarceration. Suffice it to say that the petitioner has been facing a long incarceration and his case is based on parity, is the contention of the learned Advocate for the petitioner. It is next contended that the only points of difference between the petitioner and co-accused Ravi Ranjan that the petitioner bears two criminal antecedent, but admittedly both the cases are of different nature; moreover the petitioner is incarcerated since 03.04.2021, but till



date only three charge-sheet witnesses have been examined and discharged, whereas one witness has been partially examined and there is no likelihood of conclusion of trial in near future.

6. this Court while granting bail to co-accused Ravi Ranjan in Cr. Misc. No. 35866 of 2024 has taken note of relevant facts and the principles highlighted by the Hon'ble Supreme Court giving primacy to right to speedy trial; which shall govern the case of the petitioner; and thus reproduced hereunder:

“6. Learned Advocate for the petitioner further submitted that from the materials available on record, the entire allegation against the petitioner is based upon his voluntary statement recorded under Section 67 of the NDPS Act, which is not admissible in the eyes of law in view of the mandate of the Apex Court in **Tofan Singh Vs. State of Tamil Nadu [(2021) 4 SCC 1]**. In course of arguments, he drew the attention of this Court on a judgment rendered by the Hon'ble Apex Court in **Mohd Muslim @ Hussain Vs. State (NCT of Delhi) 2023 SCC OnLine SC 352**, wherein the Hon'ble Apex Court in its paragraphs no. 22 and 23



has held as follows:

“22. Before parting, it would be important to reflect that laws 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. Jails are overcrowded and their living conditions, more often than not, appalling....

23. The danger of unjust imprisonment, is that inmates are at risk of “prisonisation” a term described by the Kerala High Court in *A Convict Prisoner v. State*, 1993 SCC OnLine Ker 127 “a radical transformation” whereby the prisoner:

“loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turn out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes.”

7. He next submitted that even in the case



of **Hussainara Khatoon Vs. 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".

8. Learned Advocate for the petitioner further submitted that recently the Hon'ble Apex Court in **Satendra Kumar Antil Vs. Central Bureau of Investigation [(2022) 10 SCC 51]** has observed 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 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.”

9. He further placed reliance upon the order of the learned co-ordinate Bench of this Court in **Raj Kumar Thakur @ Raj Kumar Vs. The State of Bihar [Cr. Misc. No. 9036 of 2023]** and submitted that while granting bail, the learned single Judge has taken note of the observation made by the Hon’ble Supreme Court that the right of speedy trial of an accused is his fundamental right under Article 21 of the Constitution of India. Although Section 37 of the NDPS Act stipulates certain conditions regarding grant of bail in case of recovery of commercial quantity of contraband but the said condition in itself get diluted, when the fundamental right of the accused of speedy trial is per se violated. Certain instances have also been shown where the accused persons have been allowed bail after completion of custody of more



than 2-3 years.”

7. On the other hand, learned Senior Advocate for the Union of India opposes the prayer for bail and submits that apart from the criminal antecedent, the recovery from the petitioner is of commercial quantity and, as such, rigors provided under Section 37 of the NDPS Act requires the compliance of twin principle, which cannot be ignored. There are cogent material suggesting complicity of the petitioner and the trial is going on and release of the petitioner would certainly hamper the trial. The petitioner is said to be a kingpin.

8. After careful examination of the materials available on record and after taking note of the submissions made on behalf of the learned counsel representing the NCB, it appears to the Court that the entire prosecution case revolves around voluntary statement of the petitioner recorded under Section 67 of the NDPS Act. There is no material showing any connection of the petitioner with the accused person, who were allegedly carrying contraband or there is any call detailed report or money transaction from his account to other accused.

9. This Court is also conscious of the fact that the petitioner has been incarcerated since 03.04.2021 and till date out of six witnesses only three witnesses have been examined



and one witness has been partially examined. The liberty of accused, who is facing a prolong trial deserves attention of the Court. The reliance of the petitioner on the judgment rendered in the case of **Mohd Muslim @ Hussain (supra)** finds substance.

10. Regard being had to the submissions made on behalf of the parties and considering the fact that the case of the petitioner is based on parity to that of co-accused Ravi Ranjan and there is no likelihood of the conclusion of the trial in near future and till date out of six charge-sheet witnesses only three witnesses have been examined, apart from the fact that the entire case of the petitioner is based upon his voluntary statement recorded under Section 67 of the NDPS Act, which is held to be not admissible by the Hon'ble Apex Court in **Tofan Singh (supra)**, coupled with the fair antecedent of the petitioner, let the petitioner, named above, be released on bail on furnishing bail bonds of Rs.50,000/- (Fifty thousand) with two sureties of the like amount each to the satisfaction of learned 1st Additional District & Sessions Judge-cum-Special Judge (NDPS), Aurangabad in connection with NCB Case No. 10 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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