

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.60500 of 2024

Arising Out of PS. Case No.-2 Year-2021 Thana- N.C.B (GOVERNMENT OFFICIAL)
District- Aurangabad

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Vinay Kumar Son of Chhathu Prasad @ Chhathu Prasad Gupta Resident of
Village- Mir Chak (Begumpur), PS- Ara (Town), District -Bhojpur

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Union of India through Director, National Narcotics Department, Bihar,
Patna Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Bachan Jee Ojha with Mr. Binod Kumar Pandey, Advocates
For the Opposite Party/s	:	Mr. Arvind Kumar with
For the UOI	:	Mr. Bharat Bhushan, Advocates

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

3 25-10-2024 Heard Mr. Bachan Jee Ojha, learned Advocate for the

petitioner and Mr. Arvind Kumar, learned Advocate for the

Union of India.

2. This is an application for grant of bail to the
petitioner, who is in custody in connection with NCB Case No.
2 of 2021 registered for the offences punishable under Section
8(C) read with Sections 20(b)(ii)(C), 25 and 29 of the Narcotic
Drugs and Psychotropic Substances Act.

3. The police on a tip off trade of narcotic substance
intercepted a Tata 407 bearing Registration No. BR01GA 9684,
which vehicle was being escorted by Honda City Car bearing



Registration No. WB06C9552. Two persons were apprehended from each of the vehicles. On search, total 300 Kgs. ganja was recovered from truck-Tata 407. The apprehended persons confessed their involvement in smuggling of Ganja.

4. Learned Advocate for the petitioner contended that the name of the petitioner has been implicated in this case only on account of he being the owner of the truck-Tata 407. It is contended that the vehicle in question was being used for the purposes of transportation of goods by the driver of the vehicle and he had never been acquainted that any narcotic substance was being carried out by his driver. It is further contended that the entire case against the petitioner is based upon the statement of the apprehended person recorded under Section 67 of the NDPS Act; save and except these materials, there is nothing on record suggesting the complicity of the petitioner in the crime. The petitioner has been incarcerated since 13.05.2021 and there is no likelihood of conclusion of the trial in near future and thus in any view of the matter keeping him behind the bar without providing speedy disposal of the trial would violate the fundamental rights. It is lastly contended that one of the co-accused person namely, Chandan Kumar Shah @ Chandan Kumar Sah has been accorded the privilege of regular bail by



this Court in Cr. Misc. No. 75464 of 2023 vide order dated 05.01.2024, copy of which is marked as Anneuxre-P/2.

5. On the other hand, learned Advocate for the NCB vehemently opposes the bail application and submits that various materials have come which suggest that the petitioner has given his vehicle for the purpose of transpiration of narcotic substance. The CDR linkage of the petitioner with the co-accused person has also surfaced during the course of investigation. There is a statutory embargo for grant of bail in terms of Section 37 of the NDPS Act. Reliance has also been placed on a judgment rendered by the Apex Court in the case of ***Union of India vs. Ramsamujh & Anr.*** reported in (1999) 9 SCC 429.

6. Before parting with the case, it would be apposite to observe that one of the co-accused person namely, Chandan Kumar Shah @ Chandan Kumar Sah, whose prayer for bail was accepted by this Court taking note of the fact that there is no likelihood of conclusion of the trial in near future; as also in view of the mandate of the Apex Court in ***Mohd Muslim @ Hussain v. 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. It would also be apt to observe that in the case of **Hussainara Khatoon v. Home Secy., State of Bihar (1980) 1 SCC 81**, the Hon’ble 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. Recently the Hon’ble Supreme Court in **Satendra Kumar Antil v. Central Bureau of Investigation [(2022) 10 SCC 51]** has ruled 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.”

9. The cumulative observation of the Hon’ble Supreme Court clearly ruled 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 gets diluted, when the fundamental right of the accused of speedy trial is *per se* violated.

10. Regard being had to the submissions made on behalf of the parties and considering the fact that the petitioner has been incarcerated since 13.05.2021 and there is no likelihood of the conclusion of the trial in near future, coupled with the fact that the co-accused person who was apprehended with the narcotic substance has been allowed the privilege of bail by this Court as well as the fair antecedent of the petitioner, let the petitioner, abovenamed, be released on bail on furnishing bail bonds of Rs. 50,000/- (Rupees fifty thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge (NDPS)-cum- ADJ-1st, Aurangabad in connection with NCB Case No. 2 of 2021, subject to the condition that one of the bailors shall be the own/close family members 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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