

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.62352 of 2024

Arising Out of PS. Case No.-446 Year-2022 Thana- BEUR District- Patna

Prem Paswan @ Jhandu S/O Babulal Paswan R/O Village- Kasthua, P.S-
Paraiya, Distt- Gaya, Bihar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr.Akash Shankar, Ms. Nausheen Fatma, Mr. Abhya Kumar, Mr. Shubham, Mr. Atul Kumar Anjan, Ms. Nikita Anand, Ms. Arushi Anand, Advocates. For the Opposite Party/s : Mr. Bharat Bhushan, APP.
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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

3 28-11-2024 Heard Mr. Akash Shankar, learned counsel for the
petitioner and Mr. Bharat Bhushan, learned APP.

2. The petitioner is in judicial custody in connection with Beur P.S. Case No. 446 of 2022 for the offences punishable under Sections 8© read with Section 21© of N.D.P.S Act, 1985 lodged on 03.09.2022 by the informant, Atulesh Kr. Singh.

3. As per the prosecution story, the informant who is/was the Station Head Officer of the Beur Police Station, upon secret information and after informing the senior, surrounded the boys selling drugs and took them into judicial custody. They were Anirudh Paswan @ Rocky Raj and Prem Paswan @ Jhandu (petitioner herein), upon search, there is



recovery/seizure of 260 gms of Brown Sugar powder in a polythin which ultimately, resulted in their arrest and accordingly, the FIR.

4. Subsequently, the material was sent to Forensic Science Laboratory and it was confirmed that the seized material is/are Heroin. The Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth for short 'the 1985 Act') specifies the normal quantity as 05 grams and commercial quantity as 250 grams which exceeded in the present case inasmuch as the recovery/seizure is 260 grams.

5. Considering the aforesaid facts, a Co-ordinate Bench of this Court, (Hon'ble Mr. Justice Sunil Kumar Panwar, as his Lordship then was) rejected the prayer of the petitioner with a direction to the trial court to expedite the trial. This order was passed in Cr. Misc. No. 61905 of 2023 on 28.11.2023.

6. As the trial could not be concluded, the present petition.

7. In this case, the status report was called for and according to the letter no. 314 dated 21.09.2024, charges have been framed against this petitioner as also Anirudh Paswan on 19.06.2024 and six charge-sheet witnesses have been summoned and as per letter dated 21.09.2024, the next date of hearing was



26.09.2024.

8. It is the case of the petitioner that he has remained in custody since 04.09.2022 (para-26 of the petition) but concedes that he has got criminal antecedent. It is the further case of the petitioner that he has remained in custody for two years and as per the last report, the trial is not likely to be concluded in near future, as such, in view of the order passed by the Hon'ble Apex Court in **Mohd. Muslim @ Hussain v. State (NCT of Delhi)** reported in **2023 LiveLaw (SC) 260**, the petitioner is entitled for bail. Learned counsel for the petitioner has taken this Court to paragraphs-16 and 21 onward which read as follows:-

“16. In the most recent decision, Satender Kumar Antil v. Central Bureau of Investigation(2022) 10 SCC 51, prolonged incarceration and inordinate delay engaged the attention of the court, which considered the correct approach towards bail, with respect to several enactments, including Section 37 NDPS Act. The court expressed the opinion that Section 436A ich requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973 would apply:

"We do not wish to deal with individual enactments as each special Act has got an



objective behind it, followed by the rigour 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 mom 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 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."

21. 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. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31 December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country. Of



these 122,852 were convicts; the rest 4,27,165 were undertrials.

22. 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 as 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 turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes."

23. There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal²² (also see Donald Clemmer's 'The Prison Community' published in 1940²³). Incarceration has further deleterious effects where the accused belongs the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable). and ensure that trials - especially in cases, where special laws enact stringent



provisions, are taken up and concluded speedily.

24. For the above reasons, the appellant is directed to be enlarged on bail, subject to such conditions as the trial court may impose. The appeal is allowed, in the above terms. No costs.

9. He has further taken this Court to another order of the Hon'ble Apex Court in the case of **Ramlal v. State of Rajasthan [S.L.P. (Crl.) No. 9510/2024]** to submit that despite the accused having 450 grams Smack recovered from them, relief was granted taking into account his period of incarceration.

10. Mr. Bharat Bhushan, learned APP, on the other hand, submits that unlike in the present case where the petitioner is having antecedents, in that case, the petitioner was not having criminal antecedent. Again here, the charges have been framed in the month of June, 2024 itself and as such, it cannot be the case of the petitioner that inordinate delay has taken place necessitating grant of bail to him.

11. It is his further submission that the decision cited in the case of **Mohd. Muslim @ Hussain (supra)** talks about the grant of bail in case of inordinate delay but again here, 26.09.2024 was the date of hearing after the summons were



issued to the prosecution witnesses. He further submits that a time frame can be given in this case, so that the trial court can be concluded failing which, the case of the petitioner can be considered.

12. Having gone through the facts of the case as also the submissions put forward by the parties and perusal of the orders/judgments of the Hon'ble Apex Court provided by the learned counsel for the petitioner, this Court finds force in the submissions put forward by the learned APP. The petitioner is having criminal antecedent, the recovery/seizure is 260 Grams of Heroin, the FSL report has confirmed it to be the Heroin, as per the last trial court report, the charges have been framed in the month of June, 2024 and immediately, thereafter, the court concerned issued summons to the prosecution witnesses fixing the next date of hearing as 26.09.2024.

13. So far as the orders/judgments of the Ho'ble Apex Court provided by the learned counsel for the petitioner is concerned, this case can be clearly differentiated inasmuch as not only this petitioner is having criminal antecedent, there is no laxity on the part of the trial court and it is trying its best to conclude the same. Though this Court is in agreement with the submissions of the learned APP that the Trial Court can be



requested to conclude the trial within a time frame.

14. Every case has different facts and circumstances and the orders/judgments presented by the learned counsel for the petitioner certainly do not fit in the present case.

15. In that background and considering the allegation that has come against him coupled with the fact that the petitioner has criminal antecedent, no relief can be granted to him and the petition, as such, stands rejected.

16. Charges have been framed, summons issued, it is expected that the Trial court proceeds in the matter in right earnest and expedite it on urgent basis and in case adjournments sought for, only a short dates to be given. Each and every sentence of this order must be taken note of by the Trial court to ensure that the Trial is taken to its logical conclusion at an earliest.

17. With the aforesaid observation, the bail application stands rejected.

(Rajiv Roy, J)

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