

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.66521 of 2024

Arising Out of PS. Case No.-10 Year-2020 Thana- N.C.B (GOVERNMENT OFFICIAL)
District- Patna

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Bashisht Kumar @ Bashishtha Kumar @ Bashisth Kumar S/O Durga Rai R/O
Village- Raghapur, P.S- Bakhitiyarpur, Distt.- Patna.

... .. Petitioner/s

Versus

Union of India through Narcotics Control Bureau Bihar

... .. Opposite Party/s

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with

CRIMINAL MISCELLANEOUS No. 71027 of 2024

Arising Out of PS. Case No.-10 Year-2020 Thana- N.C.B (GOVERNMENT OFFICIAL)
District- Patna

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Surendra Kumar Ray @ Surendra Kumar Son of Mr. Lakhan Deb Ray @
Lakhan Dev Ray Resident of Village and Post Office - Chandpura, Police
Station - Raghapur, District - Vaishali

... .. Petitioner/s

Versus

The Union of India through NCB, Patna Bihar

... .. Opposite Party/s

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Appearance :

(In CRIMINAL MISCELLANEOUS No. 66521 of 2024)

For the Petitioner/s	:	Mr. Madhukar Anand, Adv.
For the Opposite Party/s	:	Mr. Dr Krishna Nandan Singh (Asg)
For the UOI/NCB	:	Mr Bindhyachal Rai, Sr. C.G.C.
	:	Ms. Punam Kumari Singh, C.G.C.

(In CRIMINAL MISCELLANEOUS No. 71027 of 2024)

For the Petitioner/s	:	Mr. Madhukar Anadan, Adv.
	:	Mr. Dr. K.N. Singh, A.S.G.
For the Opposite Party/s	:	Mr. Dr. K.N. Singh (A.S.G.)
For the UOI/NCB	:	Mr. Awadhesh Kr. Pandey, Sr. C.G.C.
	:	Mr Arvind Kumar, C.G.C.
	:	Mr Bindhyachal Rai, Sr. C.G.C.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

4 29-11-2024 Heard the learned Advocate for the petitioners and the

learned Advocate for N.C.B.

2. Since both the matters are arising out of same P.S. case

in connection with Special (NDPS) P.S. Case No. 141 of 2020, arising out of Crime No. NCB/PZU/V/10/2020 Case and, as such, with the consent of the parties, both the applications are being heard together and disposed off by this common order.

3. The petitioners seek regular bail, who are in custody in connection with Special (NDPS) P.S. Case No. 141 of 2020, which arises out of Crime No. NCB/PZU/V/10/2020, registered for the offence punishable under Sections 20(B) (ii) (C), 29 and 35 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as 'the NDPS Act').

4. This is the third attempt made on behalf of the petitioners for grant of their regular bail, as earlier twice the prayer for bail of the petitioners was negated by this Court in Cr. Misc No. 62808 of 2021 and Cr. Misc No. 12081 of 2022 vide order dated 10.10.2022 and thereafter, the prayer of the petitioners had further been rejected vide order dated 12.01.2024.

5. The prayer for bail of the petitioners was turned down taking into consideration the materials available on record, apart from the statements of the petitioners recorded under Section 67 of the N.D.P.S. Act, which led the N.C.B. team to arrive at and search and seized the truck, in question, which

resulted into recovery of huge quantity of contraband substance like *Ganja* to the tune of 607kg. Further materials collected during the course of investigation also disclosed the petitioners and other co-accused persons were in touch with each other.

6. Learned Advocate for the petitioners contended that though the prayer for bail of the petitioners have already been rejected on merit and, as such, he is not pressing the application on that regard, but certain facts cannot be ignored that after interception of the truck, in question, the driver and co-driver were apprehended at this Court and on the disclosure of the driver, the names of the co-accused Raj Ghos was sprung up as supplier of the *Ganja*. The approached person also disclosed about his staying at Mamta Hotel, Bakhtiyarpur; on the said information, the NCB team raided Mamta Hotel and apprehended Raj Ghos and Sheikh Sammiullah. It is said co-accused Raj Ghos, who disclosed the name of both the petitioners, as the consignee of seized *Ganja*. Save and except, the disclosure of co-accused persons and the statement of the petitioners recorded under Section 67 of the N.D.P.S. Act, there is no material.

7. On the last occasion, when the prayer for bail of the petitioners was negated, this Court had made observation to

expedite the trial and take all the necessary efforts to conclude the same, preferably within a period of six months taking note of the period of incarceration. Irrespective of the observation of this Court till date out of 12 charge-sheet witnesses, only 4 of them have been examined. There is no likelihood of the conclusion of the trial in near future, is the contention of the learned Advocate for the petitioners.

8. On the other hand, learned Advocate for the N.C.B. vehemently opposes the bail application and submits that apart from recovery of huge quantity of *Ganja* to the tune of 607kg, there are ample cogent materials collected during the course of investigation showing the complicity of the petitioners in the crime. The Call Details Report (CDR) clearly suggests that the petitioners were in touch with other co-accused persons and, as such, their involvement cannot be denied. The presence of the petitioners soon after the arrest of Raj Ghos and Sheikh Sammiullah also disclosed their complicity. It is also contended that it is the petitioners on account of whose non-cooperation the trial is being delayed. Only the official witnesses are required to be examined and there is every possibility that the trial shall be concluded in near future.

9. Before parting with this case, it would be apt to

refer the ruling of the Hon'ble Supreme Court in the case of ***Mohd. Muslim @ Hussain vs. State (NCT of Delhi) 2023 SCC Online SC 352***, wherein, the Hon'ble Supreme Court in its Paragraph Nos. 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 Patna High Court CR. MISC. No.35866 of 2024(4) dt.11-09-2024 4/9 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.”

10. The Hon'ble Apex Court in the case of ***Hussainara Khatoon & Ors. vs. Home Secretary, State of***

Bihar [1980 1 SCC 81] has in no uncertain terms held that Article 21 of the Constitution of India includes 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. In case of ***Satendra Kumar Antil vs. Central Bureau of Investigation & Anr. [(2022) 10 SCC 51]***, the Court has observed as follows:

64. Under this provision, when a person has undergone detention for a period extending to one-half of the maximum period of imprisonment specified for that offence, he shall be released by the court on his personal bond with or without sureties. The word “shall” clearly denotes the mandatory compliance of this provision. We do feel that there is not even a need for a bail application in a case of this nature particularly when the reasons for delay are not attributable against the accused. We are also conscious of the fact that while taking a decision the Public Prosecutor is to be heard, and the court, if it is of the view that there is a need for continued detention longer than one-half of the said period, has to do so. However, such an exercise of power is expected to be undertaken sparingly being an exception to the general rule. Once again, we have to reiterate that “bail is the rule and jail is an exception” coupled with the principle governing the presumption of innocence. We have no doubt in our mind that this provision is a substantive one, facilitating liberty, being the core

intendment of Article 21. The only caveat as furnished under the Explanation being the delay in the proceeding caused on account of the accused to be excluded. This Court in Bhim Singh v. Union of India [Bhim Singh v. Union of India, (2015) 13 SCC 605 : (2016) 1 SCC (Cri) 663] , while dealing with the aforesaid provision, has directed that : (SCC pp. 606-07, paras 5-6)

“5. Having given our thoughtful consideration to the legislative policy engrafted in Section 436-A and large number of undertrial prisoners housed in the prisons, we are of the considered view that some order deserves to be passed by us so that the undertrial prisoners do not continue to be detained in prison beyond the maximum period provided under Section 436-A.

6. We, accordingly, direct that jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall hold one sitting in a week in each jail/prison for two months commencing from 1-10-2014 for the purposes of effective implementation of Section 436-A of the Code of Criminal Procedure. In its sittings in jail, the above judicial officers shall identify the undertrial prisoners who have completed half period of the maximum period or maximum period of imprisonment provided for the said offence under the law and after complying with the procedure prescribed under Section 436-A pass an appropriate order in jail itself for release of such undertrial prisoners who fulfil the requirement of Section 436-A for their

release immediately. Such jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall submit the report of each of such sittings to the Registrar General of the High Court and at the end of two months, the Registrar General of each High Court shall submit the report to the Secretary General of this Court without any delay. To facilitate compliance with the above order, we direct the Jail Superintendent of each jail/prison to provide all necessary facilities for holding the court sitting by the above judicial officers. A copy of this order shall be sent to the Registrar General of each High Court, who in turn will communicate the copy of the order to all Sessions Judges within his State for necessary compliance.”

11 . Suffice it to observe that right of the speedy trial of an accused is his fundamental right under Article 21 of the Constitution of India. Although, Section 37 of NDPS Act stipulates certain conditions regarding grant of bail in case of recovery of commercial quantity of contraband, but the said conditions itself diluted when the fundamental right of the accused of speedy trial is, *per se*, violated, is the mandate of the Apex Court.

12. In the case, in hand, admittedly both the petitioners have been incarcerated in custody for over a period of four years and till date out of twelve witnesses, only four of

them have been examined. There is no likelihood of conclusion of the trial in near future. In such circumstances, keeping the petitioners behind the bar would certainly be infringing the fundamental right of the petitioners; nonetheless, even if an accused facing with serious allegation has a right to get the speedy trial.

13. In view of the certain proposition of law and the fact that the petitioners have been incarcerated for over a period of four years, let the petitioners, named above, be released on bail on furnishing bail bonds of Rs. 50,000/- (Rupees fifty thousand) each with two sureties of the like amount each to the satisfaction of learned Exclusive Special Court No. 2, NDPS Act, Patna in connection with Special (NDPS) P.S. Case No. 141 of 2020, arising out of Crime No. NCB/PZU/V/10/2020, subject to the condition that one of the bailors will be the close relatives of the petitioners with the further conditions, which are as follows:-

(i) The petitioners will cooperate in conclusion of the trial.

(ii) They will remain present on each and every date of trial till disposal of the case.

(iii) They 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, their bail bonds will liable to be cancelled.

(v) The court below shall verify the criminal antecedent of the petitioners and in case, at any stage, it is found that the petitioners have concealed their criminal antecedent, the court below shall take immediate step for cancelling the bail bond of the petitioners. 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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