

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.68573 of 2023

Arising Out of PS. Case No.-18 Year-2019 Thana- GOVERNMENT OFFICIAL COMP.
District- Patna

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Sunil Kumar @ Sunil Kumar Yadav, Son of Ganpat Rai, Resident of Village-
Raghopur, Naya Tola, PS- Bakhtiyarpur, District-Patna.

... .. Petitioner

Versus

The Union of Inida through Intelligence Officer, Patna Zonal Unit, NCB,
Ministry Of Home, Government of India

... .. Opposite Party

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Appearance :

For the Petitioner/s : Mr. Surendra Kumar Singh, Advocate.

For the Opposite Party/s : Mr. Anshuman Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

6 05-01-2024 Heard Mr. Surendra Kumar Singh, learned counsel for

the petitioner and Mr. Anshuman Singh, learned counsel for the

NCB.

2. This is the second attempt made on behalf of the
petitioner, who is seeking regular bail in connection with
Special (N.D.P.S.) Case No. 109 of 2019, arising out of F.No.
NCB/PZU/V/18/2019 registered for the offences punishable
under Sections 8(C), 20, 25 and 29 of the Narcotic Drugs and
Psychotropic Substances Act.

3. Earlier, the prayer for bail of the petitioner was
rejected by this Court vide order dated 26.09.2022 in Cr. Misc.
No. 52905 of 2021, taking into consideration the voluntary
statement of the petitioner recorded under Section 67 of the



NDPS Act and the materials, which led the NCB team to arrive at and search and seized the truck, in question, which resulted into recovery of huge quantity of contraband substance like Ganja and other materials. While rejecting the prayer for bail of the petitioner, this Court has also taken into consideration the observation of the Hon'ble Supreme Court showing narrow parameters of bail available under Section 37 of the NDPS Act and no reasonable ground was found to believe that the petitioner is not in the trafficking of huge quantity of Ganja.

4. It is submitted on behalf of the petitioner that as per the narratives of the FIR, it is evident that on a secret information, six wheeler truck bearing registration no. PB-08DS 6273, which was coming from Agartala to Purnia, carrying huge quantity of Ganja was intercepted by the team of Narcotic Control Bureau and the petitioner and one another person, namely, Gurmail Singh, who were coming from a Swift Dzire Car bearing registration no. PB10FU 2558 was also intercepted, which is said to have been escorted the six wheeler truck, that was carrying the narcotics weighing 570 Kg.

5. It is submitted that the petitioner has been incarcerated since four years and four months but till date the trial has not been concluded and still witnesses are yet to be



examined. It is 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 Hon'ble Apex Court in **Tofan Singh v. State of Tamil Nadu [(2021) 4 SCC 1]**. It is next submitted that during the course of investigation or even in the trial, no material has come suggesting the linkage of the petitioner with the traffickers, all the more, there is no Call Details Report (CDR) suggesting the fact that the petitioner was in active touch with other co-accused persons. In course of arguments, he drew the attention of this Court on a judgment rendered by the Apex Court in **Mohd Muslim @ Hussain v. State (NCT of Delhi) 2023 SCC OnLine SC 352**, wherein the 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.”

6. He next submitted that even 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”.

7. Learned counsel for the petitioner further submitted that recently the Hon’ble Apex Court in **Satendra Kumar Antil v. Central Bureau of Investigation [2022 (3) BBCJ]** 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 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.”

8. After making all the submissions, he lastly submitted that the petitioner is a man of fair antecedent and he undertakes that he would abide by all the terms and conditions as would be imposed by this Court, apart from his undertaking that he will remain present on each and every date till the conclusion of the trial.

9. On the other hand, learned counsel for the NCB, while vehemently refuting the contention of the petitioner, has submitted that the petitioner has accepted in his voluntary statement that his share in the seized 570 Kg. Ganja was two



quintals, which is a commercial quantity. He also accepted that co-accused Gurmail Singh, who was sitting beside him in the Swift Dzire Car, had sent the truck to Agartala for loading Ganja in the truck on his instruction. The petitioner also accepted that he had involved in the trafficking of Ganja in greed of money. He next submitted that the petitioner had signed on all the documents prepared by the NCB without any threat and on the basis thereof, during the course of investigation, sufficient material has come suggesting the involvement of the petitioner. Moreover, the chemical examination report also suggests that the recovered substance was Ganja.

10. He next submitted that from the records, it also appears that the petitioner was in constant touch with the other co-accused. Heavy reliance has been made on a judgment rendered by the learned co-ordinate Bench of this Court in **Chandan Kumar v. Union of India [Cr. Misc. No. 53381 of 2022]**, wherein the learned single Judge while referring to the judgment of Hon'ble Apex Court passed in **SLP (CRL) No. 2351 of 2023 (Union of India v. Ajay Kumar Singh @ Pappu)** in paragraphs 14, 15 and 16 has held as follows:

“14. This apart, it is noticed that the High Court, in passing the impugned order of bail, had lost sight of Section 37 of the NDPS Act, which,



inter alia, provides that no person accused of an offence involving commercial quantity shall be released on bail unless the twin conditions laid down therein are satisfied, namely, (i) the public prosecutor has been given an opportunity to oppose the bail application; and (ii) the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any such offence while on bail.

15. For the sake of convenience Section 37(1) is reproduced hereinbelow:-

“37. Offences to be cognizable and non-bailable.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 2 [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on

his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to



commit any offence while on bail.’

16. In view of the above provisions, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.”

11. This Court earlier vide order dated 13.10.2023 has called for the present status report in connection with the trial, wherein it has been reported that altogether seven witnesses have been examined, cross-examined and discharged and one witness is yet to be examined.

12. Before parting with the final conclusion, it would be relevant to observe that person accused of an offence under the NDPS Act, is found in possession of commercial quantity or more, should not be released on bail, unless the mandatory conditions provided under Section 37 of the NDPS Act, namely, there are reasonable ground for believing that the accused is not guilty of such offence; and (ii) he is not likely to commit any offences while on bail, are satisfied.

13. This Court is also conscious of the fact that reasonable ground means something more than, *prima facie*,



ground.

14. Now in view of the aforesaid rigors, provided under the Act, when this Court examine the facts and the materials brought during the course of investigation and trial, it is manifest that the entire allegation and the materials against the petitioner, is/are based upon his voluntary statement recorded under Section 67 of the Act and none else.

15. Needless to observe that such statement cannot be used as a confessional statement in the trial of an offence under the NDPS Act. Once the accused retracted from it; the same cannot be taken into account in order to convict an accused. **[vide Tofan Singh (supra)]**.

16. It is also the admitted position that the petitioner was not apprehended from the vehicle in question carrying contraband goods. Thus, the duty owes over the prosecution to prove control of the petitioner over the contraband for conviction. Mere presence of the petitioner in the car, *ipso facto*, does not prove the fact that the petitioner had knowledge about the truck carrying contraband, particularly when nothing incriminating has been recovered from person or possession of the petitioner.

17. This Court has also carefully examined the counter



affidavit filed on behalf of the NCB, but save and except the voluntary statement of the petitioner recorded under Section 67 of the NDPS Act, there is no other material showing any linkage/connection, either of call detailed report or money transaction from his account to other accused or with the person, who was carrying contraband.

18. This Court is also conscious of the fact that earlier the prayer for bail of the petitioner was rejected on merit vide order dated 26.09.2022, however, considering the period of incarceration, the trial court was directed to take all necessary measures to conclude the same as early as possible. But, this is the fact that the petitioner has completed his incarceration for a period of more than four years and four months, the trial has not been concluded as yet.

19. Regard being had to the afore-noted discussion made, hereinabove and the principle of law as propounded in the case of **Tofan Singh, Mohd Muslim @ Hussain and Satendra Kumar Antil [Supra(s)]**, coupled with the fair antecedent of the petitioner and his period of incarceration since 16.09.2019 and no likelihood of the trial being concluded in near future, 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 District & Sessions Judge-cum-Special Judge, (NDPS Act), Patna in connection with Special (N.D.P.S.) Case No. 109 of 2019, arising out of F.No. NCB/PZU/V/18/2019, 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 shall liable to be cancelled.

(Harish Kumar, J)

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