

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.75464 of 2023

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

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Chandan Kumar Shah @ Chandan Kumar Sah, Son of Yukti Sah @ Uki Sav,
Resident of Village Soneghatta, PS Koilwar, District-Bhojpur.

... .. Petitioner/s

Versus

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

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Yogesh Chandra Verma, Sr. Adv. Mr. Adarsh Singh, Adv.
For the UoI	:	Mr. Praveen Kumar Sinha, Adv. Mr. Rakesh Kumar Sinha, CGC

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

4 05-01-2024 Heard Mr. Yogesh Chandra Verma, learned senior

counsel duly assisted by Mr. Adarsh Singh, learned counsel for

the petitioner and Mr. Praveen Kumar Sinha, learned senior

panel counsel along with Mr. Rakesh Kumar Sinha, learned

counsel for the N.C.B.

2. This is the second attempt made on behalf of the
petitioner, who is seeking regular bail in connection with N.C.B.
Case No. 02 of 2021 registered for the offences punishable
under Sections 8(C), 20(b)(ii)(C), 25 and 29 of the Narcotic
Drugs and Psychotropic Substances Act.

3. Earlier, the prayer for bail of the petitioner was



negatived by this Court vide order dated 06.09.2022 in Cr. Misc. No. 54838 of 2021, considering the fact that the petitioner was found to be escorted Tata 407, from which huge quantity of Ganja was recovered and further the Call Details Report (CDR) of co-accused persons, including the petitioner showed that they were in touch with each other showing involvement of all the accused persons in trafficking the Ganja and its recovery.

4. It is submitted on behalf of the petitioner that as per the narratives made in the FIR, the petitioner was one of the occupants of Honda City Car bearing registration no. WB06C 9552, which vehicle was allegedly escorted a truck (Tata 407) carrying huge quantity of Ganja weighing 300 Kg. Both the vehicles were intercepted and taken to the police station, where they have voluntarily confessed about their involvement in the trafficking of narcotics.

5. It is further submitted that the petitioner is said to be driver of the Honda City Car and at the time of interception, he was on the driving seat of the said car and there is no allegation against the petitioner that either he was in touch with the accused, who were carrying Ganja on Truck (Tata 407) or there is any material showing any bank transaction took place between the petitioner and other accused. It is next submitted



that moreover the petitioner has been incarcerated since 08.02.2021 having fair antecedent and save and except the statement of the petitioner recorded under Section 67 of the NDPS Act, there is no other material collected even the course of investigation or in the trial, suggesting the direct involvement of the petitioner in the trafficking of narcotics. Learned senior counsel 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 v. 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 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.”

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. He further placed reliance upon the order of the learned co-ordinate Bench of this Court in **Raj Kumar Thakur @ Raj Kumar v. 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.

9. On the other hand, learned counsel for the NCB, while vehemently refuting the contention of the petitioner, has submitted that earlier the prayer for bail of the petitioner was rejected on merit by considering the judgment of the Apex Court in the case of **State of Kerala v. Rajesh [(2020) 12 SCC 122]**, which clarified the position that the entire exercise that a Court is expected to undertake under the Act under Section 37 of the NDPS Act is to see the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and that he is unlikely to commit an offence under the Act, while on bail. He thus submitted that there is ample material, which suggests the involvement of the petitioner in escorting the Tata 407, from which huge quantity of Ganja was recovered.

10. It is to be noted that person accused of an offence under the NDPS Act, if 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.

11. Needless to observe that reasonable ground means something more than, *prima facie*, ground to believe that accused is not guilty of such offence.

12. 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.

13. It is also the fact that the petitioner was not apprehended from the vehicle in question carrying contraband goods and thus the duties heavily 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 no other incriminating material has been recovered showing connection of the petitioner from the accused persons, who were allegedly carrying Ganja.

14. This Court is also conscious of the fact that the prayer for bail of the petitioner was rejected on merit vide order dated 06.09.2022, however, this fact cannot be ignored that the petitioner has been incarcerated since 08.02.2021 and till date out of seven charge-sheet witnesses only three witnesses have been 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.

15. Regard being had to the submissions made on behalf of the parties and considering the fact that there is no likelihood of the conclusion of the trial in near future and till date out of seven 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 N.C.B. Case No. 02 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.

(Harish Kumar, J)

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