

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.75438 of 2023

Arising Out of PS. Case No.-6 Year-2021 Thana- GOVERNMENT OFFICIAL COMP.
District- Aurangabad

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Rakesh Kumar S/O Deo Muni Singh, R/o Village- Amethi, PS- Sanjhauli,
Distt.- Rohtas.

... .. Petitioner

Versus

The Union of India through Intelligence Officer, Narcotics Control Bureau,
Patna Zonal Unit, Patna, Bihar.

... .. Opposite Party

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Appearance :

For the Petitioner	:	Mr. Y.C. Verma, Sr. Advocate
For the UoI	:	Ms. Shail Kumari, CGC

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

13 09-08-2024

Heard Mr. Y.C. Verma, the learned senior counsel

for the petitioner and Ms. Shail Kumari, the learned Additional
Public Prosecutor for the State.

2. Petitioner seeks regular bail who is in custody since
09.03.2021, in connection with NDPS Case No. 06 of 2021, FIR
dated 08.03.2021, registered for the offences punishable under
Sections 8(c) read with 20(b)(ii)(c), 25 and 29 of the NDPS Act.

3. Earlier the petitioner has moved before this
Hon'ble Court in Cr. Misc. No. 64145 of 2021, which was
rejected vide order dated 04.05.2023.

4. According to the prosecution case, after receiving
secret information regarding a truck carrying huge quantity of
ganja that is going to pass through Chatra More, NH-139,



Aurangabad; the informant along with Department officers reached at the alleged place and after intercepting the said truck, search was made and 1031.3 kilograms of *ganja* was seized from the truck.

5. Learned counsel for the petitioner submits that petitioner has clean antecedent and he has falsely been implicated in the present case. He further submits that according to the FIR and seizure list, nothing has been recovered from the conscious possession of the petitioner, rather the recovery has been made from the truck in question and petitioner is not the owner of the truck in question. He further submits that the owner of the said truck in question is one Dayanand Kumar and name of the petitioner transpired in the present case on the basis of the confessional statement of the co-accused persons namely, Girwardhari Pandey (driver) and Rajendra Ram (co-driver), who have been arrested along with *ganja*. He further submits that petitioner is not involved in the trafficking of the narcotics and the entire allegation levelled against the petitioner is false and fabricated.

6. Learned counsel for the petitioner has relied upon the order dated 21.06.2023 passed in Cr. Misc. No. 24660 of 2023, in the case of ***Harender Raut @ Harendra Raut v. The State of Bihar***, whereby this Court has been pleased to grant



bail to the said petitioner and relevant portions of the order dated 21.06.2023 passed in Cr. Misc. No. 24660 of 2023 has been extracted herein below:

*“In support of his submissions, learned counsel for the petitioner has relied upon a judgment of the Apex Court in the case of **MOHD MUSLIM @ HUSSAIN v. STATE (NCT OF DELHI)** reported in 2023 LiveLaw (SC) 260.*

Learned counsel for the petitioner relied upon the aforesaid judgment referring the paragraph nos. 10, 11, 12, 13, 14, 15, and 16, which reads as follows:

“10. Section 37 of the NDPS Act reads as follows:

“Offences to be cognizable and non-bailable—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973-

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

(b) no person accused of an offence punishable for a term of imprisonment of five years or more under this Act 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. (2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force, or granting of bail.

11. In this case, as it stands, the appellant has been in custody since 03.10.2015, barring grant of interim bail from time to time, for wedding ceremonies and to take care of his ailing mother. It was observed by



this court, in **State of Madhya Pradesh v. Kajad** while commenting on Section 37 of the NDPS Act, that a “liberal” approach should not be adopted:

“Negation of bail is the rule and its grant and exception under sub clause (ii) of clause (b) of Section 37(1). For granting the bail the court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences with which he is charged and further that he is not likely to commit any offence while on bail. It has further to be noticed that the conditions for granting the bail, specified in clause (b) of subsection (1) of Section 37 are in addition to the limitations provided under the Code of Criminal Procedure or any other law for the time being in force regulating the grant of bail.”

12. This court has to, therefore, consider the appellant’s claim for bail, within the framework of the NDPS Act, especially Section 37. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India¹⁰, this court made certain crucial observations, which have a bearing on the present case while dealing with denial of bail to those accused of offences under the NDPS Act:

“On account of the strict language of the said provision very few persons accused of certain offences under the Act could secure bail. Now to refuse bail on the one hand and to delay trial of cases on the other is clearly unfair and unreasonable and contrary to the spirit of Section 36(1) of the Act, Section 309 of the Code and Articles 14, 19 and 21 of the Constitution. We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed we have adverted to this section in the earlier part of the judgment, We have also kept in mind the interpretation placed on a similar provision in Section



20 of the TADA Act by the Constitution Bench in Kartar Singh v. State of Punjab [(1994) 3 SCC 569]. Despite this provision, we have directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as held by a Constitution Bench of this Court in ‘A.R. Antulay v. R.S. Nayak [(1992) 1 SCC 225], release on bail, which can be taken to be embedded in the right of speedy trial, may, in some cases be the demand of Article 21, As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualized by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters.”

13. When provisions of law curtail the right of an accused to secure bail, and correspondingly fetter judicial discretion (like Section 37 of the NDPS Act, in the present case), this court has upheld them for conflating two competing values, i.e., the right of the accused to enjoy freedom, based on the presumption of innocence, and societal interest - as observed in Vaman Narain Ghiya v. State of Rajasthan (“the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal...”).



They are, at the same time, upheld on the condition that the trial is concluded expeditiously. The Constitution Bench in *Kartar Singh v. State of Punjab* made observations to this effect. In *Shaheen Welfare Association v. Union of India* again, this court expressed the same sentiment, namely that when stringent provisions are enacted, curtailing the provisions of bail, and restricting judicial discretion, it is on the basis that investigation and trials would be concluded swiftly. The court said that Parliamentary intervention is based on:

“a conscious decision has been taken by the legislature to sacrifice to some extent, the personal liberty of an undertrial accused for the sake of protecting the community and the nation against terrorist and disruptive activities or other activities harmful to society, it is all the more necessary that investigation of such crimes is done efficiently and an adequate number of Designated Courts are set up to bring to book persons accused of such serious crimes. This is the only way in which society can be protected against harmful activities. This would also ensure that persons ultimately found innocent are not unnecessarily kept in jail for long periods.”

14. In a recent decision, while considering bail under the Unlawful Activities Act (Prevention) Act, 1967, this court in *Union of India v. K. A. Najeeb*¹⁴ observed that:

*“12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 (“the NDPS Act”) which too have somewhat rigorous conditions for grant of bail, this Court in *Paramjit Singh v. State (NCT of Delhi)*, (1999) 9 SCC 252, *Babba v. State of Maharashtra*, (2005) 11 SCC 569 and *Umarmia v. State of Gujarat*, (2017) 2 SCC 731 enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such*



special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.”

The court concluded that statutory restrictions like Section 43-D(5) of the UAPA, cannot fetter a constitutional court’s ability to grant bail on ground of violation of fundamental rights.

15. Even in the judgment reported as **Vijay Madanlal Chaudhary v. Union of India**¹⁵ this court while considering bail conditions under the Prevention of Money Laundering Act, 2002, held that:

“If the Parliament/Legislature provides for stringent provision of no bail, unless the stringent conditions are fulfilled, it is the bounden duty of the State to ensure that such trials get precedence and are concluded within a reasonable time, at least before the accused undergoes detention for a period extending up to one-half of the maximum period of imprisonment specified for the concerned offence by law.”

16. In the most recent decision, **Satender Kumar Antil v. Central Bureau of Investigation** 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 (which 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 more 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 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.”

*Learned counsel for the petitioner has also relied upon a judgment of the Hon’ble Apex Court in the case of **Supreme Court Legal Aid Committee Representing Undertrial Prisoners vs. Union of India and Another** reported in (1994) 6 SCC 731, the directions and general terms and conditions laid down by the Apex Court in paragraph nos. 15 and 16, relevant extract of which reads as follows :*

“....We were told by the learned Counsel for the State of Maharashtra that additional Special Courts have since been constituted but having regard to the large pendency of such cases in the State we are afraid this is not likely to make a significant dent in the huge pile of such cases. We, therefore, direct as under:

(i) Where the undertrial is accused of an offence(s) under the Act prescribing a punishment of imprisonment of five years or less and fine, such an undertrial shall be released on bail if he has been in jail for a period which is not less than half the punishment provided for the offence with which he is charged and where he is charged with more than one offence, the offence providing the highest punishment. If the offence with which he is charged prescribes the maximum fine, the bail amount shall be 50% of the said amount with two sureties for like amount. If the maximum fine is not prescribed bail shall be to the satisfaction of the concerned Special Judge with two sureties for like amount.



(ii) Where the undertrial accused is charged with an offence(s) under the Act providing for punishment exceeding five years and fine, such an undertrial shall be released on bail on the term set out in (i) above provided that his bail amount shall in no case be less than Rs. 50,000 with two sureties for like amount.

(iii) Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.

(iv) Where an undertrial accused is charged for the commission of an offence punishable under Sections 31 and 31A of the Act, such an undertrial shall not be entitled to be released on bail by virtue of this order.

The directives in Clauses (i), (ii) and (iii) above shall be subject to the following general conditions:

(i) the undertrial accused entitled to be released on bail shall deposit his passport with the learned Judge of the Special Court concerned and if he does not hold a passport he shall file an affidavit to that effect in the form that may be prescribed by the learned Special Judge. In the latter case the learned Special Judge will, if he has reason to doubt the accuracy of the statement, write to the Passport Officer concerned to verify the statement and the Passport Officer shall verify his record and send a reply within three weeks. If he fails to reply within the said time, the learned Special Judge will be entitled to act on the statement of the undertrial accused;

(ii) the undertrial accused shall on being released on bail present himself at the police station which has prosecuted him at least once in a month in the case of those covered under Clause (i), once in a fortnight in the case of those covered under Clause (ii) and once in a week in the case of those covered by Clause (iii),



unless leave of absence is obtained in advance from the Special Judge concerned;

(iii) the benefit of the direction in Clauses (ii) and (iii) shall not be available to those accused persons who are, in the opinion of the learned Special Judge, for reasons to be stated in writing, likely to tamper with evidence or influence the prosecution witnesses;

(iv) in the case of undertrial accused who are foreigners, the Special Judge shall, besides impounding their passports, insist on a certificate of assurance from the Embassy/High Commission of the country to which the foreigner-accused belongs, that the said accused shall not leave the country and shall appear before the Special Court as and when required;

(v) the undertrial accused shall not leave the area in relation to which the Special Court is constituted except with the permission of the learned Special Judge;

(vi) the undertrial accused may furnish bail by depositing cash equal to the bail amount;

(vii) the Special Judge will be at liberty to cancel bail if any of the above conditions are violated or a cases for cancellation of bail is otherwise made out; and

(viii) after the release of the undertrial accused pursuant to this order, the cases of those undertrials who have not been released and are in jail will be accorded priority and the Special Court will proceed with them as provided in Section 309 of the Code.

16. We may state that the above are intended to operate as one time directions for cases in which the accused persons are in jail and their trial are delayed. They are not intended to interfere with the Special Court's power to grant bail under Section 37 of the Act. The Special Court will be free to exercise that power keeping in view the complaint of inordinate delay in the disposal of the pending cases. The Special Court will, notwithstanding the



directions, be free to cancel bail if the accused is found to be misusing it and grounds for cancellation of bail exist. Lastly, we grant liberty to apply in case of any difficulty in the implementation of this order."

*Directions issued in the case of **Supreme Court Legal Aid Committee (Supra)** was made applicable to the State of Bihar and some other States by subsequent order passed in the same case which has been reported in **(1995)4 SCC 695.**"*

7. Vide order dated 10.11.2023 and 17.05.2024, a report was called for with regard to the stage of trial and report dated 28.05.2024 of the learned trial Court reveals that out of six witnesses, only two witnesses have been examined as yet.

8. Learned counsel for the petitioner submits that in view of the report of the learned trial Court, there is no chance of early conclusion of the trial in near future and the petitioner is in custody since 09.03.2021, which is three years and five months.

9. The learned counsel appearing on behalf of Union of India on the other hand has vehemently opposed the prayer for bail of the petitioner and submits that from bare perusal of the FIR, it appears that altogether 1031.3 kilograms of *ganja* has been recovered from the truck in question and the co-accused persons, who are the driver and co-driver of the truck in question have recognized the petitioner. Apart from that, the



voluntary statement of the petitioner was also recorded under Section 67 of the NDPS Act on 07.03.2021 and 08.03.2021 and the petitioner had admitted his involvement in trafficking of 1031.3 kilograms of ganja. In addition to that, the confessional statement of the petitioner was confirmed in the CDR, which suggests that the petitioner was in touch with the other co-accused persons and the recovered contraband is 52 times more than the commercial quantity.

10. Considering the rival submissions made by the learned counsel for the parties, petitioner's clean antecedent, his period of custody, report of the learned trial Court and the order of this Court dated 21.06.2023 passed in Cr. Misc. No. 24660 of 2023, let the petitioner, above-named, be released on bail on furnishing bail bond of Rs. 50,000/- (Rupees Fifty Thousand only) with two sureties of the like amount each to the satisfaction of the learned Additional Sessions Judge 1st -cum-Special Judge (NDPS), Aurangabad, in connection with **NDPS Case No. 06 of 2021**, subject to the following conditions:

(i). Petitioner shall co-operate in the trial and shall be properly represented on each and every date fixed by the learned trial Court and shall remain physically present as directed by the learned trial Court and on his absence on two consecutive dates without sufficient reason, his bail bond shall



be cancelled by the learned trial Court.

(ii). If the petitioner tampers with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for cancellation of bail.

(iii). And further condition that the learned trial Court 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 learned trial Court shall take step for cancellation of bail bond of the petitioner. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

(Rajesh Kumar Verma, J)

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