

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.79945 of 2023

Arising Out of PS. Case No.-5 Year-2021 Thana- D.R.I District- Patna

Subhash Chaubey @ Baba Son Of Madan Chaubey Resident Of Village -
Near Gram Chowk, P.S. - Kanti, Kolhua, Paigambarpur, Kolhua, District -
Muzaffarpur

... .. Petitioner/s

Versus

The Union Of India Through Directorate Of Revenue Intelligence, Patna
Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Praveen Kumar Agarwal. Advocate
For the Opposite Party/s : Mr. Anshuman Singh, C.G.C.
Mr. Ranjay Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

- 5 23-02-2024 1. Heard learned counsel for the Petitioner and
learned C.G.C for the Union of India.
2. Learned counsel appearing on behalf of Union of
India seeks permission to file hard copy of the Counter Affidavit
of which a copy has been filed online.
3. Permission is granted.
4. Let the hard copy of the Counter Affidavit
submitted on behalf of the opposite party be kept on record.
5. Petitioner seeks regular bail in connection with
Special N.D.P.S Case No. 133/2021, arising out of Case File
No. DRI/LZU/PRU/718(II) ENQ-10/2021(DRI Patna Unit Case
No. 05 of 2021-22 dated 20.09.2021 registered for the offences
punishable under Sections 20, 25 and 29 of the NDPS Act.



6. The main submissions advanced by learned counsel for the petitioner are that the petitioner earlier approached to this Court for the relief of regular bail by Cr. Misc. No. 29316 of 2022 which was rejected by this Court vide order dated 24.02.2023 and the petitioner has again come before this Court for the same relief mainly on the ground of his incarceration period and no significant progress in his trial as till date, only two prosecution witnesses have been examined despite the charges having been framed upon the petitioner on 18.04.2022. Further submissions are that there is no direct evidence against the petitioner to show his involvement in the recovery of the alleged narcotic contraband and in view of the principle laid down by **Hon'ble Apex Court in the case of Mohd Muslim @ Hussain v. State (NCT of Delhi) passed in Special Leave Petition (CRL.) NO(S). 915 of 2023** this Court's power to grant bail to an accused who is alleged to be involved in the offence of narcotic material relating to commercial quantity cannot be fettered by Section 37 of NDPS Act, if undue delay has occurred in his trial. The relevant paragraph upon which learned counsel has placed reliance is as follows:-

“20. The standard to be considered therefore, is one, where the court would look at the



material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only *prima facie*, based on a *reasonable reading*, which does not call for meticulous examination of the materials collected during investigation (as held in *Union of India v. Rattan Malik*). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. *Satendar Kumar Antil*). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.”

7. On the contrary, learned counsel appearing on behalf of Union of India has vehemently opposed the bail prayer of the petitioner and submits that the petitioner's wife's truck was used in transporting the alleged huge quantity of seized narcotic material and the petitioner was found escorting the said truck and several accused persons remained involved in the alleged crime which was being committed in an organized manner.

8. Heard both the sides and perused the materials as



well as the report sent by the trial Court regarding the status of petitioner's trial. There is serious allegation against the petitioner as he is alleged to be involved in smuggling of a huge quantity of narcotic material which is said to be 382.500 kilograms of *Ganja* recovered from a truck which is registered in the name of the petitioner's wife and so far as the progress in the trial of the petitioner is concerned, as per the trial court's report, the examination of PW-1 was completed in seven dates by the trial Court and examination of PW-2 Ramanand Chowdhary was completed in four dates, so in view of this fact it cannot be said that an undue delay has taken place in the trial of the petitioner, the present circumstances do not persuade this Court to enlarge the petitioner on bail. Accordingly, petitioner's second prayer for bail stands rejected.

(Shailendra Singh, J)

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