

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.82088 of 2023

Arising Out of PS. Case No.-612 Year-2019 Thana- PIRBAHOR District- Patna

Suraj Kumar @ Suraj Chandravanshi Son Of Late Laxmi Prasad Mohalla-
New Damariya Gardanibagh Ps- Gardanibagh Dist- Patna Petitioner/s
Versus

The State of Bihar Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar
For the Opposite Party/s : Mr.Shailendra Kumar

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL ORDER

4 09-02-2024 Heard learned counsel for the petitioner and

learned APP for the State.

2. The petitioner has renewed his prayer for grant of regular bail in connection with Special Case No. 170 of 2019 raising out of Pirbahore P.S. Case No. 612 of 2019 registered for the offence punishable under sections 20, 21 and 22 of the N.D.P.S. Act, which was earlier rejected by another co-ordinate Bench of this Court vide order dated 26.03.2021 passed in Cri. Misc. No. 38441 of 2020 with a liberty to the petitioner that if the trial would not **conclude within nine months** from the date of receipt/production of a copy of this order, he may renew his prayer for bail.

3. **In compliance of order dated 12.5.2023 passed by this Court in Cri. Misc. No. 46289 of 2022,**



counter affidavit was filed on behalf of Superintendent of Police, Patna, where he tendered his unqualified and unconditional apology for the inconveniences caused to this Court and submitted that remaining witnesses shall be produced before the learned trial court expeditiously, preferably within two months.

4. Vide order dated 20.6.2023 passed in Cr. Misc. No. 46289 of 2022, second time bail petition of this petitioner was disposed of with a direction to the trial court to **conclude the trial within a period of four months**, failing which petitioner will be at liberty to renew his prayer for bail.

5. Again, on 15.12.2023 a progress report was called for by this Court and in compliance of the same, progress report dt. 5.1.2024 sent by Additional District and Sessions Judge-IV, Patna, has been received. From perusal of the report, it appears that nine months more are required for disposal of the case, although in earlier order dt. 20.6.2023, trial court was directed by this Court to conclude the trial within four months. Prosecution could not produce the witnesses before the trial court so the same has not been



concluded as yet.

6. It is submitted by learned counsel for the petitioner that petitioner is languishing in judicial custody since long and there is no hope to conclude the trial in near future.

7. As per allegation in the FIR, on 27.11.2019 informant intercepted a vehicle and apprehended three accused persons, namely Jitendra, Suraj (petitioner) and Raj Kumar Thakur (driver). On search 26 packet, were found kept below the seat and further each packet containing 500 sachet of brown sugar like substance were recovered. Total weight of contraband substance was 9.8 Kilogram.

8. Learned counsel appearing on behalf of the petitioner has submitted that petitioner is innocent and has committed no offence. He has no concern with the seized contraband article or with the vehicle in question. Petitioner being a passerby, made the scapegoat in this case with ill motive. Similarly situated other accused person, namely, Raj Kumar Thakur, (driver) has already been enlarged on bail by another coordinate Bench of this Court vide order dated 29.04.2023 passed in Cr. Misc. No. 9036 of 2023.



Petitioner is languishing in judicial custody since 28.11.2019.

9. Learned counsel for the petitioner submits that the Hon'ble Apex Court in the case of ***Amit Singh Moni Vs. State of Himachal Pradesh*** (Criminal Appeal No. 668 of 2020) decided on 12.10.2020, a case where 3 kg. And 285 gram of Charas was recovered, was pleased to grant bail to the accused, who had undergone total custody of 2 years and 7 months. Similarly, the Hon'ble Apex Court in the case of ***Kulwant Singh Vs. State of Punjab***, SLP (Crl) No. 518 of 2021 decided on 10.11.2021 was pleased to grant bail to the accused in a case of recovery of contraband of commercial quantity, taking into consideration the advance age of the said accused also his period of incarceration, which was of two years. In the present case also, the petitioner on the alleged date of occurrence was of 25 years of age and till now his total incarceration period is more than 4 years.

10. Learned counsel for the petitioner submits that the Hon'ble Apex Court in the case of ***Mohd. Muslim @ Hussain Vs. State (NCT of Delhi) Vs. State of***



Himachal Pradesh (Special Leave Petition (CRL.) No (s). 915 of 2023) decided on March 28, 2023 while considering bail, held that:

12.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 Sect, 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 Constituon Bench in **Kartar Singh Vs. 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 Vs. 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.”

11. The aforesaid judgment of the Hon’ble Apex Court clearly established that when the fundamental right of



an accused of NDPS Act of speedy trial is violated, then the mandatory conditions of Section 37 of the NDPS Act stands diluted and the accused can be granted privilege of Regular Bail. Learned counsel for the petitioner further submits that till date trial has not concluded. He further submits 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 article but the said condition in itself gets diluted, when the fundamental right of the accused of speedy trial is violated.

12. Learned Additional Public Prosecution for the State vehemently opposed the prayer for bail of the petitioner and submits petitioner was arrested on spot with contraband material. He further submits that earlier, bail petition of the petitioner was twice rejected by this Court vide order dated 26.03.2021 passed in Cr. Misc. No. 38441 of 2020 and vide order dated 20.06.2023 in Cr. Misc. No. 46289 of 2022.

13. Considering the aforesaid facts and



circumstances and period of custody of the petitioner, let the petitioner, above named, be released on bail on furnishing bail bond of Rs. 10,000/- (Ten Thousand only) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge XXVI, Patna in connection with Special Case No. 170 of 2019 arising out of Pirbahore P.S. Case No. 612 of 2019, subject to the following conditions:-

(i) Petitioner shall co-operate in the trial and shall be present on each and every fixed date and on his absence on two consecutive dates without sufficient reason, his bail bond shall be cancelled by the Court below.

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

(iii) In case, the petitioner repeats offence of similar nature after enlargement on bail, his bail-bonds will be cancelled by the court below.

(Sunil Kumar Panwar, J)

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