

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.86148 of 2024

Arising Out of PS. Case No.-10 Year-2021 Thana- N.C.B (GOVERNMENT OFFICIAL)
District- Aurangabad

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Karan Kumar S/o Baban Singh @ Baban Rai R/o Village- J.P. Dera Chakki,
PO- Chakki, PS- Brahmpur, District- Buxar

... .. Petitioner/s

Versus

1. The Union of India through Intelligence Officer, Narcotics Control Bureau,
Patna Bihar
2. The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Maya Shankar Mishra

Mr.Nagendra Upadhyay

For the Opposite Party/s : Dr. Awadhesh Kr. Pandey, Sr. CGC

Mr. Arvind Kumar, CGC

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

2 20-12-2024 Heard Mr. Maya Shankar Mishra, learned Advocate

for the petitioner and Mr. Arvind Kumar, learned Central

Government Counsel for the Union of India.

2. This is an application for grant of bail to the
petitioner, who is in custody in connection with NCB Case No.
10 of 2021 corresponding to NDPS Spl. Case No. 11 of 2021,
registered for the offences punishable under Sections 8/ 20(b)(ii)
(c) and 29 of the Narcotic Drugs and Psychotropic Substances
Act, 1985.

3. This is the second attempt made on behalf of the
petitioner as earlier prayer for bail of the petitioner was turned



down by this Court in Cr. Misc. No. 52857 of 2021 vide order dated 30.08.2022 after taking into consideration that the huge quantity of ganja, commercial in nature has been recovered from the possession of the petitioner and other accused persons. While rejecting the prayer for bail of the petitioner, this Court had observed that the learned trial court will take all necessary measures to expedite and conclude the trial as early as possible.

4. Learned Advocate for the petitioner contended that despite the fact that the prayer for bail was rejected way back on 30.08.2022, till date out of six charge sheet witnesses, only four witnesses have been examined and there is no likelihood of conclusion of the trial in near future. Drawing the attention of this Court to Annexure-P/3 series, it is further contended that other co-accused persons, who were also apprehended along with the petitioner and from their possession 112.20 kgs. *ganja* was recovered, they have been allowed bail. It is lastly contended that be that as it may the petitioner has been incarcerated since 04.04.2021 and he undertakes before this Court that he will fully cooperate in the trial.

5. On the other hand, learned Advocate for the Union of India vehemently opposes the bail application and submits that the trial is at the fag end and his release from custody would



certainly delay the trial. It is further contended that the petitioner bears 3 criminal antecedents. Beside the present one, it also suggests the involvement of the petitioner in such kind of crime.

6. Having heard the learned Advocates for the parties and after going through the materials available on record as well as the earlier orders of this Court, whereby other co-accused persons have been granted bail, this Court finds that the case of the petitioner is based on parity. It would be suffice to quote the relevant paragraphs of the bail order dated 11.01.2024 passed in Cr. Misc. No. 35866 of 2024, whereby other co-accused person namely, Ravi Ranjan, having similar allegation has been granted bail.

*“6. Learned Advocate for the petitioner 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.”

7. *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”.*

8. *Learned Advocate for the petitioner*



*further submitted that recently the Hon'ble Apex Court in **Satendra Kumar Antil v. Central Bureau of Investigation [(2022) 10 SCC 51]** 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 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.”

*9. 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.”

7. 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 six charge sheet witnesses, only four witnesses have been examined, besides the period of incarceration since 04.04.2021 as also the case of the petitioner is exactly identical to other co-accused persons, Sunny Yadav and Ravi Ranjan, who have been granted bail vide order as contained in Annexure P/3 series, let the petitioner, abovenamed, be released on bail on furnishing bail bonds of Rs. 50,000/- (Rupees fifty thousand) with two sureties of the like amount each to the satisfaction of learned 1st Additional District and Sessions Judge-cum-Special Judge (NDPS), Aurangabad in connection with NCB Case No. 10 of 2021 corresponding to NDPS Spl. Case No. 11 of 2021, subject to the condition that one of the bailors shall be the own/close family members 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.

(v) The court below 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 court below shall take immediate step for cancelling the bail bond of the petitioner. However, the acceptance of bail bonds, in terms of the above-mentioned order, shall not be delayed for this purpose or in the name of verification.

(Harish Kumar, J)

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