

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2133 of 2025

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

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Mukesh Kumar S/O Vinod Sah @ Vinod Prasad Resident of Village-
Birampur, P.S- Kolibar, District- Bhojpur.

... .. Petitioner/s

Versus

The Union of India, Through N.C.B., Bihar, Patna. Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ranjeet Kumar, Adv. Mr. Kanishk Kaustubh, Adv. Mr. Ankesh Kumar Sinha, Adv. Mr. Rajnish Prakash, Adv.
For the Opposite Party/s :		Mr. Bindhyachal Rai, Senior Panel Counsel

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

5 02-05-2025 Heard the parties.

2. A counter affidavit has been filed, in Court, on behalf of the Narcotics Control Bureau, Patna Zonal Unit, the same is taken on record.

3. An application for grant of bail to the petitioner, who is in custody 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 & 29 of the Narcotic Drugs and Psychotropic Substances Act.

4. This is the fourth attempt made on behalf of the petitioner, as earlier prayer for bail of the petitioner came to be negated by this Court in Cr. Misc. No. 56651 of 2021, Cr. Misc. No. 46788 of 2023 and lastly in Cr. Mis. No. 18128 of 2024. While rejecting the prayer for bail of the petitioner, the Court had taken note of the fact that there are materials available on record suggesting that the petitioner was one of the occupants of the Honda City car, which was allegedly escorting the Truck (Tata 407) from where 300 kgs. of *ganja* was recovered and thus considering the materials as also the rigors prescribed under Sections 37(i)(b) of the NDPS Act, prayer for bail of the petitioner came to be rejected.

5. Learned Advocate for the petitioner while pressing the application has fairly submitted that since the prayer for bail of the petitioner has already been turned down thrice, hence no submission is being made on the point of merits. However, he reiterated that it is the fact that the alleged recovery has not been made from the actual conscious possession of the petitioner and the evidence are mainly based upon the statement recorded under Section 67 of the NDPS Act; all the more the petitioner



has been incarcerated since 08.02.2021 i.e., for over a period of four years and till date out of 7 charge sheet witnesses, only five of them have been examined. It is further contended that one of the occupants, who was also allegedly sitting with the petitioner in the Honda City car, and escorting the Truck, has been accorded the privilege of bail by this Court in Cr. Misc. No. 75464 of 2023 considering the prolonged incarceration and the rulings of the Hon'ble Apex Court in the cases of ***Mohd Muslim @ Hussain v. State (NCT of Delhi) 2023 SCC OnLine SC 352, Hussainara Khatoon v. Home Secy., State of Bihar (1980) 1 SCC 81*** and further ***Satendra Kumar Antil v. Central Bureau of Investigation [(2022) 10 SCC 51]***.

6. On the other hand, learned Advocate for the Narcotics Control Bureau vehemently opposed the prayer and submits that 20 kgs. or more of *ganja* comes under the commercial quantity and here in this case the seized *ganja* is 300 kgs., which is almost 15 times higher than its prescribed commercial quantity. Prayer for bail of the petitioner is devoid of merit as he was involved himself in trafficking of illicit *ganja* in full knowledge and conscious, inasmuch as there is a statutory embargo for granting bail in terms of Section 37 of the NDPS Act, 1985. Referring to the ruling of the Hon'ble



Apex Court in the case of *Union of India vs. Ram Samujh & Anr. [1999 SCC (Cri.) 1522]* it is vehemently contended that the Court held in no uncertain terms that “the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotics drugs are instrumental in causing death or inflicting death blow to a number of innocent young victims, who are vulnerable; it cause deleterious effects and a deadly impact on society; they are hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely’.

7. Having heard the learned Advocates for the respective parties, the Court is not oblivious of the fact that Section 37 of the NDPS Act, cast stringent embargo upon the Court to satisfy that the credible, plausible and reasonable grounds are available that the accused is not guilty of the offences and he is unlikely to commit an offence under the Act.

8. There is no iota of confusion regarding the settled legal position and the rigors provided under the NDPS Act. However, it is also the admitted fact that the petitioner has been



incarcerated for over a period of four years three months and still there is no likelihood of the conclusion of the trial in near future, inasmuch as out of 7 charge sheet witnesses, yet two witnesses are to be examined. Taking note of the prolonged incarceration, on the last occasion this Court vide its order dated 10.05.2024 while negating the prayer for bail of the petitioner, it was expected that the learned trial court shall take all endeavours to conclude the trial preferably within a period of six months. It would be pertinent to note here that the Apex Court in the case of ***Hussainara Khatoon*** (supra) has held that the 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”.

9. Emphasizing the primacy of right to speedy trial as engraved under Article 21 of the Constitution, the Hon’ble Supreme Court in ***Mohd Muslim @ Hussain*** (supra) 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.”

10. Further the Apex Court reiterating the afore noted settled legal position in **Satendra Kumar Antil** (supra) 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.”

11. While considering the prayer for bail in favour of one of the co-accused person in connection with the present case, this Court has also placed reliance upon the order of a Bench of this Court in **Raj Kumar Thakur @ Raj Kumar v. The State of Bihar [Cr. Misc. No. 9036 of 2023]**, wherein the learned Court has taken note of the observation made by the Hon’ble Supreme Court that the right to 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.

12. Considering the observations made by this Court in an identical matter as also taking note of the fact that the petitioner has been incarcerated since 08.02.2021 and there is a bleak chance of conclusion of the trial in near future, coupled with the fact that co-accused person having more or less identical allegation has been accorded the privilege of bail, 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 Additional District & Sessions Judge-cum-Special Judge (NDPS), Aurangabad in connection with N.C.B. Case No. 02 of 2021, subject to the condition as would be imposed by the learned trial Court, besides 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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