

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18574 of 2025

Arising Out of PS. Case No.-10 Year-2020 Thana- N.C.B (GOVERNMENT OFFICIAL)
District- Patna

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Shree Raj Ghosh @ Raj Ghosh S/O Shyamal Ghosh Resident of Village-
Shamleshwari Colony, Modipara, P.S- Town, District- Sambalpur (Orissa).

... .. Petitioner/s

Versus

The Union of India through the Intelligence Officer, Narcotic Control Bureau
(NCB), Patna Zonal Unit Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Abhishek Kumar, Adv.

For the Opposite Party/s : Ms. Shail Kumari, CGC

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

3 25-07-2025 Heard Mr. Abhishek Kumar, learned Advocate for the

petitioner and Ms. Shail Kumari, learned Central Government

Counsel.

2. Application for grant of bail to the petitioner, who
is in custody in connection with Special (N.D.P.S.) Case No.
141 of 2020, arising out of NCB Case No.
NCB/PZU/V/10/2020, registered for the offences punishable
under Section 8(c) read with sections 20(b)(ii)(c), 29 and 35 of
the Narcotic Drugs and Psychotropic Substances Act, 1985
(hereinafter referred to as ‘the NDPS Act’)

3. This is the second attempt made on behalf of the
petitioner, as earlier prayer for bail of the petitioner stood
negated by this Court in Cr. Misc. No. 58134 of 2021 vide order



dated 10.10.2022 taking note of the materials available on record, apart from the statements of the petitioner recorded under Section 67 of the NDPS Act as also considering the rigors provided under Section 37 of the NDPS Act.

4. Learned Advocate for the petitioner submitted that since the prayer for bail of the petitioner stood negated by this Court considering the merit of the case and, as such, he is not going into the merit of the case. However, this fact cannot be ignored that the alleged recovery has been made from a truck having registration No. UP 53CT 0913 and two persons namely, Vicky Sharma and Upendra Kumar Yadav were apprehended with 607 kgs. of *ganja*. The said Vicky Sharma disclosed the name of the consignor of *ganja* and on the disclosure made, a raid was conducted at the whereabouts of the petitioner, who, at that point of time, was staying in Mamta Hotel, Bakhtiyarpur and thus, the petitioner along with one Sheikh Sammiullah was apprehended. Both the persons have also disclosed the name of Basishtha Kumar and Surendra Kumar Ray @ Surendra Kumar as the consignee of the seized *ganja*; they were also later on apprehended. It is the specific contention of the petitioner that Sheikh Sammiullah, who was also apprehended along with the petitioner, has been allowed bail by this Court in Cr.Misc. No.



57203 of 2021 vide order dated 10.10.2022 itself, taking note of the fact that his complicity in the crime was only to the extent that his vehicle was hired by co-accused Raj Ghosh through a travel agency and prior to that there had never been any association of the petitioner for assisting in trafficking of Ganja and other narcotic substance. Learned Advocate for the petitioner further contended that co-accused Bashisht Kumar @ Bashishtha Kumar and Surendra Kumar Ray @ Surendra Kumar have also been accorded the privilege of bail considering their period of incarceration and no likelihood of the conclusion of the trial in near future vide order dated 29.11.2024 in Cr. Misc. No. 66521 of 2024 with Cr. Misc. No. 71027 of 2024, copies of both the orders have been placed on record.

5. Referring to the aforesaid facts, learned Advocate for the petitioner further contended that now the petitioner has been incarcerated for over a period of 4 years and 10 months and till date there is no likelihood of conclusion of the trial.

6. Heavy reliance has been placed on a decision rendered by the Hon'ble Apex Court in the case of ***Mohd. Muslim @ Hussain vs. State of (NCT of Delhi) [2023 SCC OnLine SC 352]*** and further a decision rendered in the case of ***Surendra Kumar Antil vs. Central Bureau of Investigation &***



Anr. [(2022) 10 SCC 51]. It is lastly urged before this Court that though the petitioner has four criminal antecedent but not of the identical nature with the present case. The disclosure of all the cases have been made in the supplementary affidavit filed on behalf of the petitioner and, as such the petitioner bears four criminal antecedent.

7. On the other hand, learned Advocate for the Union of India has submitted that during the course of investigation ample materials have come which suggest that the petitioner has played a role of consignor of the recovered *ganja* and he was found in touch with other accused persons; moreover on the disclosure made by the petitioner and one another co-accused person, consignee of *ganja* were also apprehended.

8. Before parting with the present case, this Court deems it fit and proper to take note of the order passed by this Court in Cr. Misc. No. 66521 of 2024 with Cr. Misc. No. 71027 of 2024, wherein while allowing the prayer for bail, this Court has observed as follows:

“9..... The Hon’ble Supreme Court in the case of Mohd. Muslim @ Hussain vs. State (NCT of Delhi) 2023 SCC Online SC 352, wherein, the Hon’ble Supreme Court in its Paragraph Nos. 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 Patna High Court CR. MISC. No.35866 of 2024(4) dt.11- 09-2024 4/9 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. The Hon’ble Apex Court in the case of **Hussainara Khatoon & Ors. vs. Home Secretary, State of Bihar [1980 1 SCC 81]** has in no uncertain terms held that Article 21 of the Constitution of India includes 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.*



In case of Satendra Kumar Antil vs. Central Bureau of Investigation & Anr. [(2022) 10 SCC 51], the Court has observed as follows:

64. Under this provision, when a person has undergone detention for a period extending to one-half of the maximum period of imprisonment specified for that offence, he shall be released by the court on his personal bond with or without sureties. The word “shall” clearly denotes the mandatory compliance of this provision. We do feel that there is not even a need for a bail application in a case of this nature particularly when the reasons for delay are not attributable against the accused. We are also conscious of the fact that while taking a decision the Public Prosecutor is to be heard, and the court, if it is of the view that there is a need for continued detention longer than one-half of the said period, has to do so. However, such an exercise of power is expected to be undertaken sparingly being an exception to the general rule. Once again, we have to reiterate that “bail is the rule and jail is an exception” coupled with the principle governing the presumption of innocence. We have no doubt in our mind that this provision is a substantive one, facilitating liberty, being the core intendment of Article 21. The only caveat as furnished under the Explanation being the delay in the proceeding caused on account of the accused to be excluded. This Court in Bhim Singh v. Union of India



[Bhim Singh v. Union of India, (2015) 13 SCC 605 : (2016) 1 SCC (Cri) 663], while dealing with the aforesaid provision, has directed that : (SCC pp. 606-07, paras 5-6)

“5. Having given our thoughtful consideration to the legislative policy engrafted in Section 436-A and large number of undertrial prisoners housed in the prisons, we are of the considered view that some order deserves to be passed by us so that the undertrial prisoners do not continue to be detained in prison beyond the maximum period provided under Section 436-A.

6. We, accordingly, direct that jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall hold one sitting in a week in each jail/prison for two months commencing from 1- 10-2014 for the purposes of effective implementation of Section 436-A of the Code of Criminal Procedure. In its sittings in jail, the above judicial officers shall identify the undertrial prisoners who have completed half period of the maximum period or maximum period of imprisonment provided for the said offence under the law and after complying with the procedure prescribed under Section 436-A pass an appropriate order in jail itself for release of such undertrial prisoners who fulfil the requirement of Section 436-A for their release immediately. Such jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge



shall submit the report of each of such sittings to the Registrar General of the High Court and at the end of two months, the Registrar General of each High Court shall submit the report to the Secretary General of this Court without any delay. To facilitate compliance with the above order, we direct the Jail Superintendent of each jail/prison to provide all necessary facilities for holding the court sitting by the above judicial officers. A copy of this order shall be sent to the Registrar General of each High Court, who in turn will communicate the copy of the order to all sessions Judges within his State for necessary compliance.”

“11 . Suffice it to observe that right of the speedy trial of an accused is his fundamental right under Article 21 of the Constitution of India. Although, Section 37 of NDPS Act stipulates certain conditions regarding grant of bail in case of recovery of commercial quantity of contraband, but the said conditions itself diluted when the fundamental right of the accused of speedy trial is, per se, violated, is the mandate of the Apex Court.”

9. The position is admitted that the petitioner has spent almost 4 years 10 months behind the bar and still, as it appears from the status report, out of 12 witnesses, only 5 witnesses have been examined and thus there is no likelihood of the conclusion of the trial in near future.

10. In the afore noted circumstances, keeping the



petitioner behind the bar would, in the opinion of this Court, certainly be infringing the fundamental right of the petitioner.

11. In view of the settled legal proposition of law and the period of incarceration, coupled with the fact that other co-accused persons have been enlarged on bail taking note of their period of incarceration, let the petitioner, named above, 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 **Exclusive Special Judge-II, NDPS Act, Patna** in connection with N.D.P.S. Case No. 141 of 2020, arising out of NCB Case No. NCB/PZU/V/10/2020, subject to the condition that one of the bailors will be the close relatives of the petitioner with the 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.

(vi) The petitioner shall also deposit/furnish proof of his permanent address with the name and mobile number of two of his close family members.

(Harish Kumar, J)

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