

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25787 of 2025

Arising Out of PS. Case No.-43 Year-2021 Thana- GOVERNMENT OFFICIAL COMP.
District- Gaya

Govind S/O Surendra @ Surender @ Surenda Pal R/O Vill.- Nayari, P.S.-
Usara, Dist.- Badayun, U.P.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Manish Kumar No. 2, Adv.

For the Opposite Party/s : Mr. Binod Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

3 27-06-2025 Heard Mr. Manish Kumar No. 2, learned Advocate

appearing on behalf of the petitioner and the learned Additional

Public Prosecutor for the State.

2. The application for grant of bail to the petitioner,
who is in custody in connection with N.D.P.S. Case No. 43 of
2021 registered for the offences punishable under Sections 8,
20(b)(ii)(c) of the N.D.P.S. Act.

3. Earlier the prayer for bail of the petitioner came to
be rejected by this Court in Criminal Miscellaneous No. 56534
of 2021 vide order dated 17.10.2022 taking note of the fact that
the petitioner alongwith one another co-accused were
apprehended, while they were running a truck from where



altogether 180 kgs ganja was recovered. Aggrieved with the order of this Court, the petitioner preferred Special Leave Petition (Criminal) Diary No. 30026 of 2024 after a delay of 541 days. The Hon'ble Apex Court taking note of the prolonged incarceration and also the fact that the trial had not commenced due to the fault of prosecution, extended liberty to the petitioner and the co-accused person to approach the Trial Court for grant of bail. It was also directed to the Trial Court to consider the prayer for bail of the petitioner in the light of the judgment pronounced by the Apex Court. In pursuant to the liberty extended in the afore-noted Special Leave Petition, the petitioner approached before the Trial Court; however, despite the fact that the petitioner has been incarcerated for over a period of four years and till date not a single witness is examined, the learned trial Court taking note of the decision rendered in the case of *Union of India. Vs. Shiv Shanker Kesari, (2007) 7 SCC 798*; *Union of India Vs. Ratan Mallik @ Habul, (2009) 1 SCC (Cri) 831* as also the decision in *State of Kerela Vs. Rajesh, AIR 2020 SC 721* negated the prayer of the petitioner.

4. From perusal of the order passed by the learned trial court, rejecting the prayer of the petitioner, it would be



evident that the entire emphasis was given on the rigors provided under Section 37 of the N.D.P.S. Act; and the caution directed by the Hon'ble Supreme Court to ascertain as to whether there is reasonable ground for believing that the accused is not guilty of the offence and further he is not likely to commit offence under the said Act.

5. Mr. Manish Kumar No.2, learned Advocate for the petitioner taking this Court through the order passed by the Hon'ble Supreme Court has submitted that the observation made by the Apex Court has been clearly overlooked by the learned trial court while rejecting the prayer for bail of the petitioner, inasmuch as, the factum of prolong incarceration has been completely overlooked. It is further contended that the trial court only considered the rigors provided under Sections 37(i) (b)(ii) of the NDPS Act but did not follow the mandate of the Apex Court rendered in various decisions wherein the Court has underscore the precious right provided under Article 21 of the Constitution of India, that 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".

6. Reliance has been placed on a decision rendered in the case of ***Rabi Prakash v. The State of Odisha [Special Leave***



to Appeal (Crl.) No(s). 4169/2023] wherein the Hon'ble Court while taking note of the fact that the appellant was incarcerated for over a period of three and half years and there was no likelihood of the conclusion of the trial accorded the privilege of bail by holding the prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1(b)Iii) of the NDPS Act.

7. On the other hand, learned Additional Public Prosecutor for the State opposed the prayer for bail of the petitioner and submitted that the materials available on record clearly demonstrate that on secret information, the Excise officials intercepted a truck and on search huge quantity of 180 kgs. of *ganja* was recovered. The petitioner was found present in the truck along with one Biresh and both of them are said to be driver and *khalasi* respectively. The order impugned came to be passed in the light of the order of the Hon'ble Supreme Court taking note of the limitation imposed under Section 37(1)(b)(ii) of the NDPS Act.

8. Before parting with the case, it would be pertinent to state here that in the case of *Hussainara Khatoon v. Home*



Secy., State of Bihar (1980) 1 SCC 81 while emphasizing on the issue of expeditious disposal of the trial, the Hon'ble Supreme Court has, in no uncertain terms, held that the 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".

9. It would also be relevant to refer the decision rendered in the case of *Mohd Muslim @ Hussain v. 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 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. This Court also thinks it worth benefiting to encapsulate the relevant extract of the decision in the case of ***Satendra Kumar Antil v. Central Bureau of Investigation [(2022) 10 SCC 51]*** wherein the Court while reiterating the celebrated principles, “the bail is the rule and jail is the exception” has held in paragraph no. 64 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. The reliance placed by the petitioner on a decision rendered in ***Rabi Prakash*** (supra) also finds support to the case of the present petitioner, who has been incarcerated since 19.04.2021 i.e., for more than four years two months.

12. On the last occasion, when the matter was taken up, this Court had directed the learned trial court to submit a report regarding the present status of the trial in question. The report clearly suggests that though charge has been framed on 06.08.2022 and the record is running for prosecution evidence, but till date no witness has been examined.

13. From the discussions made hereinabove, it is obvious that Section 37 of the NDPS Act clearly stipulates rigorous conditions regarding grant of bail in case of recovery of commercial quantity of contraband, but such condition in itself get diluted, when the fundamental right of the accused of speedy trial is *per se* violated. The right to speedy trial of an accused is undoubtedly his fundamental right under Article 21 of the



Constitution of India.

14. In the case in hand, admittedly the petitioner has been incarcerated in custody for over a period of four years and two months; nonetheless, any witness has been examined, thus there is no likelihood of the conclusion of the trial in near future. In such circumstances, keeping the petitioner behind the bar would certainly infringe the fundamental right of the petitioner. This Court has also been informed that the petitioner bears absolute fair antecedent.

15. In view of the discussions made hereinabove, let the petitioner, named above, be released on bail on furnishing bail bonds of Rs.25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge 1st, Gaya in connection with NDPS Case No. 43 of 2021, subject to the condition that 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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