

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46798 of 2024

Arising Out of PS. Case No.-7 Year-2020 Thana- N.C.B (GOVERNMENT OFFICIAL)
District- Patna

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Arvind Kumar, S/o Doman Ray R/o Village-Saidabad Mohanpur, P.S.
Raghopur, Distt-Vaishali

... .. Petitioner/s

Versus

The Union of India through, the Director Narcotic Control Bureau, Patna,
Bihar Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s :	Mr. Sanjeev Shekhar Pathak, Adv.
For the Opposite Party/s :	Mr. Awadhesh Kr. Pandey, Sr. CGC
	Mr. Arvind Kumar, CGC, Adv.
	Mr. Lokesh, Adv.
	Mr. Abhishek Verma, Adv.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

6 07-02-2025 Heard learned counsel for the petitioner and learned
counsel for the NCB.

2. This is the third attempt made on behalf of the petitioner, who is seeking regular bail in connection with Special Case No. 103 of 2020, arising out of F.No. NCB/PZU/V/07/2020 registered for the offences punishable under Sections 8(C) read with 20(b)(ii)(c), 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act.

3. Earlier, the prayer for bail of the petitioner was turned down twice by this Court vide order dated 27.04.2022 passed in Cr. Misc. No. 50861 of 2021 and further vide order dated 19.07.2023 passed in Cr. Misc. No. 28936 of 2023 taking



into consideration the serious nature of accusation and huge recovery of 1400.2 kg. *ganja* from the truck, of which the petitioner was said to be the khalasi/cleaner.

4. Learned counsel for the petitioner drawing the attention of this Court to the order dated 19.07.2023 has contended that while negating the prayer for bail of the petitioner on the last occasion, liberty was accorded to the petitioner to renew his prayer for bail, if there would not be any substantive progress in the trial. It is further contended that since the prayer for bail of the petitioner has already been considered and rejected on merit(s), he is not pressing the bail application on merit(s) but the fact cannot be ignored that the entire case revolves around co-accused Naeb Singh and Vakil Rai. The petitioner is said to be one of the helpers, who was moving in the truck in question with co-accused Naeb Singh. This fact has also been admitted in the statements of all the accused recorded under Section 67 of the NDPS Act. Learned counsel for the petitioner further contended that it is the admitted position that till date the trial has not been concluded and there is no likelihood of the conclusion of the trial in near future. Reliance has also been placed on the decision rendered by the Hon'ble Supreme Court in the cases of **Mohd Muslim @**



Hussain v. State (NCT of Delhi) 2023 SCC OnLine SC 352
and in **Satendra Kumar Antil v. Central Bureau of**
Investigation & Another [(2022) 10 SCC 51].

5. On the other hand, learned counsel for the NCB vehemently opposed the bail application and submitted that the complicity of the petitioner cannot be denied for the simple reason that he was apprehended by the team of NDPS while he was indulged in trafficking of 1400.2 Kg *ganja*. Referring to the statement made in the counter affidavit, further submission has been made that the petitioner was in touch with other co-accused persons and this fact has also been admitted in his voluntary statement recorded under Section 67 of the NDPS Act. The petitioner has committed the offence under NDPS Act in his full knowledge and consciousness in lure of earning illegal money and was apprehended on the spot while sitting on the co-driver seat. During the course of investigation, it has also transpired that the petitioner along with co-accused Naeb Singh went to Orissa and after loading *ganja* there he was coming to Patna, Bihar to handover the consignment to one Vakil Rai.

6. This Court has heard learned counsel for the respective parties and also perused the materials available on record.



7. Without entering into the merit of the case, at this position, it would be apt and proper to refer the mandate of the Hon'ble Supreme Court in **Mohd Muslim @ Hussain** (supra), wherein the Hon'ble Supreme 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.”

8. The Hon'ble Supreme Court in the case of



Hussainara Khatoon v. Home Secy., State of Bihar [(1980) 1 SCC 81], 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”.

9. Reliance placed by the petitioner on the decision rendered by the Hon’ble Supreme Court in **Satendra Kumar Antil** (supra) also emphasized speedy trial and deprecated prolonged incarceration without any reasonable and justified reason; the Hon’ble Supreme Court 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.”

10. Before parting with the final conclusion, it would be relevant to observe that there is no dispute that the person accused of an offence under the NDPS Act, if found in possession of commercial quantity or more, should not be released on bail, unless the mandatory conditions provided under Section 37 of the NDPS Act, namely, there are reasonable ground for believing that the accused is not guilty of such offence; and (ii) he is not likely to commit any offences while on bail, are satisfied.

11. This Court is also conscious of the fact that reasonable ground means something more than, *prima facie*, ground. However, this fact cannot be ignored that the petitioner has been incarcerated since 17.07.2020 and the grant of bail on the ground of undue delay in trial, cannot be said to be fettered by Section 37 of the NDPS Act, given the imperative of Section 436A of the Code which is applicable to offence under the NDPS Act, too, as has been held by the Hon’ble Apex Court. Above all; whenever there is a conflict between the fundamental rights and the statutory embargo/rigors the fundamental right



has to give a way.

12. Regard being had to the afore-noted discussion made, hereinabove and the fact that despite the observation and the expectation of this Court that the Trial Court will take all necessary measures to conclude the trial, the same has not been done as also the principle of law as propounded in the case of **Mohd Muslim @ Hussain and Satendra Kumar Antil [Supra(s)]**, coupled with the fair antecedent of the petitioner and his period of incarceration and no likelihood of the trial being concluded in near future, 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 Sessions Judge 9th-cum-Special Judge, Patna in connection with Special Case No. 103 of 2020, arising out of F.No. NCB/PZU/V/07/2020, 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 shall liable to be cancelled.

(Harish Kumar, J)

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