

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37115 of 2025

Arising Out of PS. Case No.-80 Year-2024 Thana- MAHISHI District- Saharsa

1. Mithlesh Kumar@ Mithilesh Kumar Son of Rajendra Mehta Resident of village - Dahupatti Ward No.- 7, P.S.- Bhaptiyahi, District - Supaul
2. Vishal Kumar @ Vishal Sharma Son of Badri Sharma Village - Goripatti Ward No.- 3, P.S.- Bhaptiyahi, District - Supaul

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Bindeshwar Prasad Singh, Adv.

For the Opposite Party/s : Mr.Anuj Kumar Shrivastava, APP

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

8 03-04-2026 Heard Mr. Bindeshwar Prasad Singh, learned
Advocate for the petitioners and Mr. Anuj Kumar Shrivastava,
learned Advocate for the State.

2. This is an application for grant of regular bail to the petitioners, who have been made accused in connection with Mahishi P.S. Case No. 80 of 2024, registered for the offences punishable under Sections 8, 20(b)(ii)(c), 25, 29 of the Narcotic Drugs and Psychotropic Substances Act.

3. This is the second attempt made on behalf of the petitioners, as earlier prayer for bail of the petitioners was turned down by this Court on 18.09.2024 passed in Cr. Misc. No. 60038 of 2024 taking into consideration the fact that the



petitioners were found in possession of narcotic substance, coupled with the fact that the recovery was made from the vehicle of the petitioners in which they, along with another co-accused person, were found sitting.

4. Learned Advocate for the petitioners submitted that the vehicle, in question, in which the petitioners were traveling does not belong to them, rather the vehicle belonged to one Sunil Kumar Manal from where *ganja* like substance weighing 23.600 kgs. was recovered, which material has been fortified during the course of investigation. He further submits that since the prayer for bail of the petitioner was turned down on merit, he is not making any submission touching with the merit of the case but this fact cannot be ignored that the petitioners had been incarcerated for over a period of two years and now charges have been framed but till date only four prosecution witnesses have been examined and, as such, there is no likelihood of conclusion of the trial in near future. It is further submitted that admittedly there is recovery of 23.600 Kgs. *ganja* which is just above the commercial quantity and now the petitioners have been incarcerated for two years, hence taking note of the decision rendered by the Apex Court in the case of *Hussainara Khatoon v. Home Secy., State of Bihar [(1980) 1 SCC 81]*, it is



submitted that Hon'ble Apex Court has mandated 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", hence the petitioners should be enlarged on bail.

5. Reliance has also been placed on a decision rendered by the Hon'ble Supreme Court in the case of ***Satendra Kumar Antil v. Central Bureau of Investigation [(2022) 10 SCC 51]*** wherein the 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.”

6. He lastly referred to the decision passed in **Mohd Muslim @ Hussain v. State (NCT of Delhi) [2023 SCC OnLine SC 352]**, wherein the 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. On the other hand, learned Advocate for the State vehemently opposed the bail application and submitted that the rigors provided under Section 37 of the NDPS Act clearly bars the bail unless there is material which suggests that there are reasonable grounds for believing that the accused is not guilty of such offence and he would not indulge in such crime while on bail. He further submits that now the trial is in progress and it is likely to be concluded within a reasonable period of time. He further drew the attention of this Court to para-3 of the bail application and submitted that both the petitioners have been found indulged in a case arising out of Bihar Prohibition and Excise Act, 2016.

8. Before parting with the case, it would be pertinent to take note of the decision rendered by the Hon'ble Supreme Court in *Dharampal Singh vs State of Punjab [(2010) 9 SCC 608]*, wherein while explaining the term 'conscious possession' the Court held that knowledge of contraband has to be gleaned from the facts and circumstances of the case. The standard of conscious possession would be different in case of public transport vehicle with several persons as opposed to private vehicle with a few person known to one another.

9. From the disclosure made in the FIR and during



investigation it has fortified that the vehicle in question belongs to co-accused Sunil Kumar Mandal and recovery has been made from the dickey of the said vehicle, which was duly under the control of the owner of the vehicle.

10. In view of the aforesaid facts; considering the submissions advanced and taking note of the rulings of the Hon'ble Supreme Court as referred hereinabove, especially in the cases of *Mohd Muslim @ Hussain and Satendra Kumar Antil (supra)*, coupled with the age of the petitioners about 24 and 20 years respectively and the vehicle from where recovery has been made does not belong to the petitioners, besides no other cogent materials have been collected during the course of investigation, which *prima facie* indicate that they are indulged in trafficking of such illicit substance; as also they have been incarcerated for over a period of two years and there is no likelihood of the trial being concluded in near future, let the petitioners, named above, be released on bail on furnishing bail bonds of Rs.25,000/- (Twenty Five Thousand) each with two sureties of the like amount each to the satisfaction of learned Sessions Judge cum Special Judge, Saharsa in connection with Mahishi P.S. Case No. 80 of 2024, subject to the condition that one of the bailors will be the close relatives of the petitioners



with further conditions which are as follows:-

- (i) The petitioners will cooperate in conclusion of the trial.
- (ii) They will remain present on each and every date of trial till disposal of the case.
- (iii) They 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, their bail bonds shall liable to be cancelled.

(Harish Kumar, J)

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