

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9036 of 2023**

Arising Out of PS. Case No.-612 Year-2019 Thana- PIRBAHOR District- Patna

Raj Kumar Thakur @ Raj Kumar Son of Ram Janam Thakur Resident of
Mohalla- New Patna Colony, P.S.- Beur, District- Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shashank Chandra, Advocate

For the Opposite Party/s : Mr. Sanjay Kumar Pandey, APP

**CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV ORDER**

4 29-04-2023 Heard Mr. Shashank Chandra, learned counsel for the

petitioner and Mr. Sanjay Kumar Pandey, learned Additional

Public Prosecutor for the State.

Learned counsel for the petitioner is permitted to
remove the defect(s), as pointed out by the office, if any, within
a period of four weeks from today.

Petitioner seeks bail who is in custody since
27.11.2019 in connection with Pirbahor P.S. Case No. 612 of
2019, F.I.R. dated 27.11.2019 for the offences punishable under
Sections 21, 20 and 22 of the N.D.P.S. Act.

Earlier the bail petition of the petitioner was rejected
Vide order dated 11.02.2022 passed in Cr. Misc. No. 31366 of
2021.

According to prosecution case, 9.800 kg of brown



sugar like substance was recovered from the bag which was kept near the foot of the accused persons sitting in a car.

Learned counsel for the petitioner submits that petitioner has clean antecedent and he has falsely been implicated in the present case. He further submits that the allegation against the petitioner is that he was driving the vehicle in question from which the alleged contraband was recovered. However, from the F.I.R. itself it would be clear that the contraband was concealed in a bag and the said bag was kept under the middle seat of the vehicle and upon the said middle seat, two accused persons, namely, Jitendra Kumar and Suraj Kumar were sitting. It is further submitted that the informant of the present case, namely, Rizwan Ahmad Khan was examined during the trial as PW-3. The said witness at para 40 of his cross examination has clearly deposed that the contraband recovered underneath the leg of Suraj Kumar Chandravanshi and the petitioner was the driver of the vehicle in question and the said vehicle belong to one Mannu @ Abhimanyu Singh. He further submits that petitioner being the driver of the vehicle was merely following the instructions of the owner of the vehicle.

Vide order dated 08.02.2023 a report was called with regard to the present stage of trial. Report of the learned Trial



Court dated 10.02.2023 reveals that the charge has been framed against the petitioner and out of 14 charge sheet witnesses, 7 witnesses have already been examined.

Learned counsel for the petitioner further submits that the petitioner was arrested on 27.11.2019 and till date the trial has not concluded. He further submits that the right of 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 gets diluted, when the fundamental right of the accused of speedy trial is perse violated.

Learned counsel for the petitioner submits that the Hon'ble Apex Court in the case of ***Amit Singh Moni vs. State of Himachal Pradesh*** (Criminal Appeal No. 668 of 2020) decided on 12.10.2020, a case where 3 kg and 285 gram of Charas was recovered, was pleased to grant bail to the accused, who had undergone total custody of 2 years and 7 months. Similarly, the Hon'ble Apex Court in the case of ***Kulwant Singh vs. State of Punjab***, SLP (Crl) No. 518 of 2021 decided on 10.11.2021 was pleased to grant bail to the accused in a case of recovery of contraband of commercial quantity, taking into



consideration the advance age of the said accused and also his period of incarceration, which was of 2 years. In the present case also, the petitioner on the alleged date of occurrence was of 32 years of age and till now he has already completed total custody of more than of 3 years.

Learned counsel for the petitioner further submits that it appears from the aforesaid order of the Hon'ble Apex Court that the Hon'ble Apex Court has granted bail to the accused persons against whom a prosecution under the NDPS Act is pending and there is a recovery of contraband of commercial quantity.

The aforesaid judgment of the Hon'ble Apex Court clearly establishes that when the fundamental right of an accused of NDPS Act of speedy trial is violated, then the mandatory conditions of Section 37 of the NDPS Act stands diluted and the accused can be granted privilege of Regular Bail.

Learned counsel for the petitioner submits that the last prosecution witness was examined on 09.12.2022, thereafter, there is no progress in the trial and the period of custody undergone by him which is reported to be more than 3 years and there is no likelihood of the completion of the trial in the near



future.

Learned Additional Public Prosecutor for the State vehemently opposed the prayer for bail of the petitioner and submits that there is no embargo under Section 37 of the N.D.P.S. Act for grant of bail to the petitioner but fairly submits that there is no likelihood of the completion of trial in near future. The petitioner is in custody since 27.11.2019.

Considering the aforesaid facts and circumstances, let the petitioner, above named, be released on bail on furnishing bail bond of Rs. 25,000/- (Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of the learned Additional Sessions Judge XXVI, District- Patna in connection with Pirbahor P.S. Case No. 612 of 2019, subject to the following conditions:-

1. Petitioner shall co-operate in the trial and shall be properly represented on each and every date fixed by the court and shall remain physically present as directed by the court and on his absence on two consecutive dates without sufficient reason, his bail bond shall be cancelled by the Court below.

2. If the petitioner tampers with the evidence or the witnesses, in that case, the prosecution will be at liberty



to move for cancellation of bail.

3. And further condition that 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 step for cancellation of bail bond of the petitioner. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

(Rajesh Kumar Verma, J)

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