

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25116 of 2022

Arising Out of PS. Case No.-331 Year-2021 Thana- DUMRAO District- Buxar

Anil Kumar Choudhary Son of Motilal Choudhary Resident of Village -
Girdhari Gali, Ward no.14, P.s.- Dumraon, Distt.- Buxar (Bihar).

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr.Ravi Prakash Dwivedi, Advocate

For the Opposite Party/s : Mr. Jitendra Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

2 08-08-2022 Heard learned counsel for the petitioner and learned
APP for the State.

Let the defect(s), if any, as pointed out by the
office, be removed within four weeks.

The case has been registered under sections 20 and
22 of the NDPS Act in connection with NDPS Case No.
30/2021 arising out of Dumraon P.S. Case No. 331/2021.

The Station House Officer, Dumraon Police
Station has lodged this FIR stating that he got secret information
that the petitioner herein is selling 'Heroin' whereafter he
informed the superior authorities and proceeded to the place. It
has further been alleged in the FIR that upon arrival of the
police, two persons tried to escape, were apprehended, one of
them was the petitioner herein. Upon search, it has been alleged



that 49 pouches of 'Heroin' weighing 36.12 grams was recovered/seized. It has further been alleged that the petitioner herein confessed that it was sold to him by the second accused Bechhu Khan. The police thereafter searched the bag of Bechhu Khan and altogether Rs. 45,520/- as also a mobile was recovered. Accordingly, seizure list was prepared and the petitioner and the second accused (Bechhu Khan) were taken into custody.

Learned counsel for the petitioner submits that although the allegation is of recovery/seizure of the 'Heroin', save and except the allegation made in the FIR, there is nothing on record to show that the materials seized by the police is/was actually 'Heroin'. By way of supplementary affidavit, he has made categorically statement in para-2 that the charge-sheet was filed on 27.10.2021 (vide charge-sheet no. 441 of 2021) without even waiting for the report of Forensic Science Laboratory (hereinafter 'the FSL') and as such for want of the report, it can in no way be said that the alleged material was 'Heroin'.

He has brought attention to this Court an order of a coordinate bench of Patna High Court in the case of **Ram Babu Yadav vs. the State of Bihar reported in (2022) (1) B.L.J. 171** where the Court made the following observation:



“Considering the submissions of the parties, the Court finds considerable force in contention raised by the learned counsel for the petitioner that though the present case is not with regard to default bail, but then charge-sheet came to be submitted in absence of F.S.L., merely because the Investigating Officer felt that the accused would get the benefit of default bail under section 167(2) of the Cr.P.C. amply reflects that the Investigating Officer was not aware of the provisions relating to N.D.P.S. Act and was completely oblivious of Section 36A(4) of the N.D.P.S. Act as such mere filing of charge-sheet in absence of F.S.L. does not justify the incarceration of the petitioner in custody as such for the present, for the purposes of bail, without expressing any opinion on merits of the case, the petitioner is directed to be enlarged on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with two sureties of the like amount each to the satisfaction of learned Additional District and Sessions Judge-10, Sasaram, Rohtas in connection with Dinara (Bhanas O.P.) P.S. Case No. 267 of 2020 corresponding to



N.D.P.S. Case No. 11 of 2020 subject to the condition as laid down under section 437(3) Cr.P.C.

Let this order be communicated to the Superintendent of Police, Rohtas”.

It is important to record **section 36(4) of the Narcotic Drugs and Psychotropic Substances Act, 1985** (hereinafter referred to ‘the NDPS Act’ which read as follows:-

“4 In respect of persons accused of an offence punishable under section 19 or 24 or section 27-A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973(2 of 1974) thereof to “ninety days”, where they occur, shall be construed as reference to “one hundred and eighty days”:

Provided that, if it is not possible to complete the investigation within the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days”.



A bare perusal of the said section shows that “ninety days” has been construed as reference to “one hundred and eighty days” within which the police can investigate, get a report from ‘the FSL’ and submit charge-sheet. It has further been incorporated in the said section that in case it is not possible to complete the investigation within the period of 180 days, the Special Court may extend it up to one year on a report of Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond 180 days.

However, for the reasons best known and it seems the police is completely unaware of the said provision of ‘the NDPS Act’ in a haste manner submit charge-sheet within ‘ninety days’. In the process, it does not even wait for a report of the FSL’ before making declaration about the seized material.

Mr. Jitendra Kumar Singh, the learned APP appearing for the State submits that the allegation is of recovery of 36.12 grams of ‘Heroin’. However, he too concedes that the provision for submitting the charge-sheet in NDPS case is 180 days but in this case, the same has been filed on 27.10.2021 (within 60 days).

Taking into account the aforesaid facts that the



police although alleges to have recovered/seized 36.12 grams of 'Heroin' from the possession of the petitioner, without waiting for the report of 'the FSL' rushes into submitting the charge-sheet holding the recovered/seized material to be 'Heroin' as also the fact that he is in custody since 21.8.2021 (as stated in para-7 of the bail application) and has no criminal antecedent, it is a fit case in which bail be granted to the petitioner.

Let the petitioner be released on bail on furnishing bail bond of Rs. 50,000/- (Fifty thousand) with two sureties of like amount each to the satisfaction of the learned Additional District and Sessions Judge, 3rd, Buxar, in connection with NDPS Case No. 30/2021, arising out of Dumraon P.S. Case No. 331 of 2021 subject to the following conditions:

(i) one of the bailors should be the family members of the petitioner, who shall provide official/government document to show his/her bona fide;

(ii) the petitioner shall appear on each and every date before the Trial Court and failure to do so for two consecutive dates without plausible reasons will entail cancellation of bail by the Trial Court itself;

(iii) he shall appear before the concerned police station every fortnight for next one year to mark his presence;



(iv) the petitioner shall desist from committing any criminal offence again, failing which the State shall be at liberty to take steps for cancellation of his bail bonds.

Nothing recorded in this order shall be taken into account as and when the trial commence.

A copy of this order be sent to the office of Superintendent of Police, Buxar for his perusal and necessary action.

(Rajiv Roy, J)

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