

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25346 of 2022

Arising Out of PS. Case No.-304 Year-2020 Thana- DHANAHA District- West Champaran

=====

MANOJ YADAV SON OF BABUNAND YADAV R/O VILLAGE-
MURADIH BAZAR, P.S.- DHANAHA, DISTRICT- WEST CHAMPARAN

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Vijay Kr Singh No. 1, Advocate
For the Opposite Party/s : Mr. Anil Kumar Singh No. 1, APP

=====

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

2 17-08-2022 Heard learned counsel for the petitioner and learned
counsel for the State.

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

The petitioner is in judicial custody in connection
with Dhanha P.S. Case No. 304 of 2020 for the offences under
Sections 20(B), (ii), (c) and 22 of the Narcotics Drugs and
Psychotropic Substances Act.

As per the allegation in the FIR, the allegation is that
police upon patrolling duty reached the place and when the two
accused persons tried to escape by throwing the two bags,
although one managed to escape the other was apprehended.



Petitioner is the person who was apprehended. Upon search, it is alleged that from the two bags, 34 K.G. of 'ganja' was seized. Accordingly, the petitioner was taken into custody.

Learned counsel for the petitioner submits that from the two bags, 34 K.G. each of 'ganja' has been alleged to be seized, both the bags cannot be attributed to him, inasmuch as according to FIR itself, one person carrying one bag managed to escape and as such taking into account half of the same on one bag (17 K.G.) it comes below the commercial quantity. He further by way of supplementary affidavit has brought on record the charge sheet to show that the police submitted charge sheet without even waiting for the report of the Forensic Science Laboratory and as such even the police is not sure whether it is 'ganja' or anything else.

Learned counsel for the petitioner in this connection cited a judgment in the case of **Ram Babu Yadav Vs. The State of Bihar** reported in **PLJR 2020 (2) page 465**. The relevant paragraphs of the judgment is reproduced below:-

'11. Learned counsel further submits that in the FIR, the alleged recovered charas is of commercial quantity as such the period of investigation in view of Section 36A(4) was upto 180 days, but the police could have submitted a charge sheet



prior to 180 days provided the investigation would have been completed in all respect, but in the present case even without the investigation being completed, the police in haste submitted the charge-sheet in absence of F.S.L. only with a view to ensure that the accused is not granted the privilege of default bail under Section 167(2) of the Cr.P.C. Learned counsel submits that the manner in which the police has investigated and submitted the charge-sheet in haste completely offends Article 21 of the Constitution of India as Right to Life and Liberty is a Fundamental Right given to it's citizen and liberty of a person, even if he is an accused in a case, cannot be imperiled except in accordance with the procedure established by law. The mere fact that the counter affidavit records, accepting, that in absence of F.S.L. the charge sheet was submitted only with a view to keep the accused behind bar reflects the mindset of the police. The learned counsel submits that even cognizance, based on such charge-sheet, has been taken which amply demonstrates that the cognizance was taken in a mechanical manner in absence of any material on record to even remotely suggest that the seized contraband was charas or ganja in absence of F.S.L. Learned counsel



submits that the police merely by seeing or feeling cannot come to a conclusion that the seized material was charas or ganja or else there would have been no requirement of F.S.L. report.

18. Considering the submission of the parties, the Court finds considerable force in the 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/- (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.”

Considering the fact that the petitioner is in custody since 28.12.2020 and the police has submitted charge sheet in a haste without waiting for the FSL report and/or getting confirmed that whether the seized material was ‘ganja’ or not, this Court is inclined to grant bail to the petitioner.

Let the petitioner be released on bail, after framing of the charges if the same has not been framed, on furnishing bail bond of Rs. 25,000/- (Twenty Five Thousand) with two sureties of like amount each to the satisfaction of learned Sessions Judge, West Champaran, Bettiah in connection with Dhanha P.S. Case No. 304 of 2020, subject to the following conditions.

(i) one of the bailor should be the family member of the petitioner, who shall provide official 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 his 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.

With the aforesaid observations, the bail application is allowed.

(Rajiv Roy, J)

Jagdish/-

U		T	
---	--	---	--

