

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22065 of 2023

Arising Out of PS. Case No.-1234 Year-2022 Thana- SHERGHATI District- Gaya

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GUDDU KUMAR S/o- RAJ KUMAR SINGH Village- Nagawa Chatra Ps-
Chatra Dist- Chatra Jharkhand

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manish Kumar No.2, Advocate

For the Opposite Party/s : Mr. Shantanu Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

ORAL ORDER

2 19-05-2023 Heard learned counsel for the petitioner and learned A.P.P
for the State.

2. The petitioner seeks bail in connection with Sherghati
(Dobhi) P.S. Case No. 1234 of 2022 dated 26.12.2022 registered
for the offence punishable under Sections 20 (ii) (c) and 22 (c)
of the Narcotic Drugs Psychotropic Substance Act.

3. The prosecution case, in short, is that on 25.12.2022 at
about 4:30 PM while on patrolling at *Piparghati* bridge the
informant alongwith other police personnel apprehended
petitioner and co-accused, who were trying to flee on seeing
them. On enquiry they disclosed their names as Guddu Kumar
and Jeetendra Kumar Rikiyasan. It is further alleged that on
search 735 gm of Brown Sugar like substance from bag which



was hanged on the handle bar of the motorcycle and one mobile was recovered from conscious possession of petitioner. Thereafter, the Mobile set and the motorcycle were seized which is alleged to be driven by Guddu Kumar. On search, one Vivo smart phone was recovered from co-accused namely, Jeetendra Kumar. On enquiry, petitioner disclosed that the said substance was purchased from one Nilesh Ram after payment of 10-12 lakhs. Accordingly, a seizure list has been prepared.

4. Learned Counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in this case. It is submitted that nothing has been recovered from the conscious possession of the petitioner. The other co-accused, who was riding on another motorcycle and was also apprehended on the spot, was an accomplice. It is also submitted that co-accused, namely, Jeetendra Kumar has been granted bail vide **Criminal Miscellaneous No. 13424 of 2023** by a Co-ordinate Bench of this Court. Further, it is submitted that there is no proper compliance of Section 100 of the Code of Criminal Procedure while conducting search and seizure. Further, learned counsel for the petitioner relies on the order of **Ram Babu Yadav Vs State of Bihar, in Criminal Miscellaneous No. 21326 of 2021** reported in **2022 (2) PLJR 463** in which a Co-ordinate



Bench of this Court has held:-

“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. report 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.”

5. It is contended that the F.I.R. has been registered on 26.12.2022 and charge-sheet has been filed in absence of F.S.L.



report and there is also no application for extension of time under Section 36A(4) of the N.D.P.S. Act. Learned counsel for the petitioner submitted that the present case is squarely covered by the judgment of *Ram Babu Yadav's case (Supra)*. Lastly, it has been submitted that the petitioner is in custody since 26.12.2022, having no criminal antecedent and charge-sheet has been submitted in the case without F.S.L. report.

6. Learned A.P.P for the State opposes the prayer for bail of the petitioner.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties as also in view of the order passed by a Co-ordinate Bench in ***Ram Babu Yadav Vs The State of Bihar*** reported in **2022(2) PLJR 463**, the learned lower court is directed to verify as to whether charge-sheet has been filed in the absence of F.S.L. report and if the court finds that F.S.L. report has not been filed then in that event the learned court would advert to the fact whether any application for extension of time for filing charge-sheet is sought as the alleged contraband substance is more than commercial quantity. Further, the learned lower court would take into consideration as to whether investigation has been completed and whether the same is in the absence of F.S.L.



report. If the court finds that investigation has been completed without determining the nature and content of the contraband the same would be rendered as botch investigation and in that event, the benefit would tilt towards the petitioner and the petitioner would be entitled to the privilege of bail.

8. However, it is made clear that if no laches on the part of the investigation is found then in that event the petitioner could not be given benefit of privilege of bail.

(Khatim Reza, J)

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