

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.47651 of 2023**

Arising Out of PS. Case No.-156 Year-2023 Thana- GOPALGANJ TOWN District-
Gopalganj

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Bishnu Yadav S/O Late Lehari Yadav @ Lohari Yadav R/O Village- Naya
Tola, Jurabganj, Ps. Korha, Dist. Katihar Petitioner/s

Versus

The State of Bihar Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Amit Kumar Anand, Advocate

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

3 08-09-2023 Heard learned counsel appearing on behalf of the

petitioner and learned counsel appearing on behalf of the State.

2. The petitioner seeks bail in connection with

Gopalganj (Town) P.S. Case No. 156 of 2023 registered for the
offence under Sections 413 and 414 of the Indian Penal Code
and under Sections 08 and 20(b)(ii)(c) of the N.D.P.S. Act
(Narcotic Drugs and Psychotropic Substances Act).

3. The accused/petitioner is named in the F.I.R. and is
in custody since 02.03.2023.

4. The allegation against the petitioner is to have in
possession of stolen motorcycle and also with contraband i.e.,
Charas like substances total of 1.078 grams, as per seizure list.

5. Learned counsel appearing on behalf of the
petitioner submitted that petitioner was not apprehended on spot
and his name appears in this case on the basis of disclosure
made by apprehended co-accused persons, namely, Rahul



Kumar Yadav and Rajpal Paswan. It is submitted that alleged contraband was recovered from possession of apprehended co-accused Rahul Kumar Yadav and Rajpal Paswan, where nothing surfaced during the course of investigation which may suggest to invite presumptions regarding culpable mental state of this petitioner. It is further pointed out that as recovery of contraband not appears to be made from the possession of this petitioner, therefore, the application of rigorous provision as available under Section 37 of the N.D.P.S. Act not appears to be applicable in present case. It is further pointed out that the motorcycle as alleged to be recovered from the possession of this petitioner was appears to be made from the *verandah*, which is an open place and accessible by general public and cannot be said to be recovered from his conscious physical possession. It is further submitted that the cash and mobile belongs to this petitioner. It is also submitted that the apprehended co-accused Rajpal Paswan has already been granted bail by one of the learned Co-ordinate Bench of this Court through Cr. Misc. No. 53203 of 2023 vide order dated 24.08.2023. While concluding the argument, it has been submitted that petitioner found involved in one more criminal case, where he is on bail and moreover, investigation of this



case has been completed for which charge-sheet has been submitted, and as such, there is no chance of tampering with the evidence.

6. Learned APP opposes the prayer of bail.

7. Considering the facts and circumstances as mentioned above and by taking note of the fact as nothing appears during the course of investigation as to suggest, *prima facie*, culpable mental state of petitioner regarding possession of alleged contraband, where recovery of alleged motorcycle appears to be made from an open place coupled with the fact that charge-sheet has already submitted, where petitioner is in custody since 02.03.2023, accordingly, above named petitioner is directed to be released on bail in connection with Gopalganj (Town) P.S. Case No. 156 of 2023 on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand only) with two sureties of the like amount each to the satisfaction of learned Sessions Judge-cum-Special Judge (N.D.P.S.) Act, Gopalganj/concerned court, subject to the conditions as mentioned under Section 437 (3) of the Cr.P.C.

(Chandra Shekhar Jha, J.)

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