

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.65898 of 2023

Arising Out of PS. Case No.-17 Year-2023 Thana- BHANGHA District- West Champaran

Rampravesh Diswa Son of late Chumuk Diswa R/O VILL - Hardiya PS
Manpur District West Champaran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Bimlesh Kumar Pandey, Advocate
For the State : Mr.Raj Kishor Singh, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 06-12-2023 Heard learned counsel for the petitioner and Mr. Raj Kishore Singh, learned APP for the State.

2. A supplementary affidavit has been filed by the petitioner bringing on record the fact that he is an accused in another case of similar nature in which he has been granted bail.

3. The petitioner seeks bail in connection with Tr. No. 29 of 2023 arising out of Bhangaha P.S. Case No. 17 of 2023 registered for the offence punishable under Sections 20, 22, 23, 24 and 27 of the NDPS Act.

4. As per the prosecution case, 20.170 Kg. of ganja has been recovered from the possession of the petitioner.

5. It has been submitted by learned counsel for the petitioner that the charge sheet has been submitted without the FSL report and the charge sheet having been submitted without



FSL report is an incomplete charge sheet and the petitioner is entitled for grant of default bail under Section 167(2) Cr.P.C. He has taken this Court to the provision of Section 36A of The Narcotic Drugs and Psychotropic Substances Act, 1985, which reads as follows:

“36A. Offences triable by Special Courts.—(1) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—*

(a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that in cases which are triable by the Special Court where such Magistrate considers—

(i) when such person is forwarded to him as aforesaid; or

(ii) upon or at any time before the expiry of the period of detention authorised by him, that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;



(c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to an accused person in such case who has been forwarded to him under that section;

(d) a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the Central Government or a State Government authorised in his behalf, take cognizance of that offence without the accused being committed to it for trial.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974), and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to “Magistrate” in that section included also a reference to a “Special Court” constituted under section 36.

(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A 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 of one hundred and eighty days, the Special Court may extend 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.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offences punishable under this Act with imprisonment for a term of not more than three years may be tried summarily.”

6. From the reading of Section 36A (4) of the NDPS Act, it appears that in the case of offences punishable under Section 19 or Section 24 or Section 27A or for offences involving commercial quantity, the charge sheet can be submitted within 180 days and if the charge sheet is not submitted within 180 days, the accused is entitled for default bail. The proviso to Section 37(a) speaks that the public prosecutor may take an extension of time for filing the charge sheet and 180 days time can be extended for a period up to one year after the public prosecutor files the progress report of the investigation and gives specific reasons for detention of the accused beyond the said period of 180 days.

7. In the present case, the Special Public Prosecutor has not filed any application for extension of the period of charge sheet and the charge sheet, as per the contention of the petitioner, has been filed without the FSL report.



8. Learned counsel for the petitioner has also relied upon an order dated 30.11.2018 passed in Cr. Revision No. 4659 of 2015 (O & M) in the case of **Ajit Singh @ Jeeta and Anr. vs. State of Punjab** and has submitted that the Punjab and Haryana High Court in paragraph nos. 2, 26, 27 and 28 has held as follows:

“2. We have been called upon to answer the question set out below :-

“Whether the presentation of report under Section 173(2) Cr.P.C. by the police without the report of Chemical examiner/Forensic Science Laboratory amounts to incomplete challan and in the absence of any extension of time under Section 36-A(4) of the N.D.P.S. Act, the accused is entitled to bail under Section 167(2) Cr.P.C. ?”

26. For this reason as well, it is essential that the report of the Chemical Examiner be included in the report under Section 173 Cr.P.C. and without which it can at best be termed to be an incomplete challan depriving the Magistrate of relevant material take cognizance and if it is not submitted within the requisite period of 180 days, it would essentially result in a default benefit to the accused unless an application is moved by the Investigating Agency apprising the Court of status of investigation with a prayer for extension of time to the satisfaction of the Court.

27. We emphasize on the stringent aspect of the N.D.P.S. Act which would compellingly persuade us to take the aforesaid view. Without determining the nature and content of the



contraband, it would be draconian to propel an accused into the throes of a trial. The liberty of an individual would constantly be imperiled at the hands of dubious officials of the police who may venture to falsely implicate a person.

28. It is for this reason that we would unhesitatingly conclude that the Chemical Examiner's report is an essential ; integral and inherent part of the investigation under the N.D.P.S. Act as it would lay the foundation of an accused's culpability without which a Magistrate would not be enabled to form an opinion and take cognizance of the accused's involvement in the commission of offence under the Act.”

9. Learned counsel for the petitioner has also relied upon an order passed by this Court in **Ram Babu Yadav vs. State of Bihar** reported as **2022(2) PLJR 462**. This Court in the case of **Ram Babu Yadav** in paragraph no. 18 has held as follows:

“18. Considering the submissions 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/- (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.”

10. The Hon’ble Supreme Court in the case of **Uday Mohanlal Acharya v. State of Maharashtra** reported as **(2001) 5 SCC 453**, has held that the default bail is a right which cannot be denied to the petitioner. For grant of default bail, the petitioner is not required to file an application. It is for the Court to consider that the charge sheet has not been filed in time and therefore, the petitioner is given liberty to execute the bail bonds. The non filing of the charge sheet will include the filing of incomplete charge sheet without FSL report in NDPS cases to defeat the benefit of default bail to an accused and because of the act of the investigating agency of filing an incomplete charge sheet without FSL report in NDPS cases, the petitioner cannot be kept in judicial custody.

11. Considering the aforesaid, I am of the view that the petitioner should not have been kept in custody once incomplete charge sheet was filed without FSL report and it is



held that filing of incomplete charge sheet without FSL report in NDPS cases is no charge sheet in the eye of law.

12. Considering the aforesaid, this application is allowed.

13. Let the petitioner, above named, be released on bail on furnishing bail bonds of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the learned Additional District and Sessions Judge 4th, Bettiah West Champaran in connection with Tr. No. 29 of 2023 arising out of Bhangaha P.S. Case No. 17 of 2023.

14. Before releasing the petitioner on bail, the Special Judge will verify the contention of the petitioner that the FSL report was not submitted along with the charge sheet.

15. The petitioner will also mark attendance in Manpur Police Station on each Sunday of each month. Any default in appearance at the Police Station would be result in cancellation of bail bonds of the petitioner.

(Sandeep Kumar, J)

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