

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.73253 of 2023

Arising Out of PS. Case No.-149 Year-2023 Thana- DUMARIAGHAT District- East
Champaran

SANJAY KUMAR SHRIVASTAVA @ SANJAY KUMAR SON OF
SURESH PRASAD SHRIVASTAVA R/O VILL.- DUKUNDI PUR, P.S.-
DARAUDHA (DARAUDA), DIST.- SIWAN Petitioner/s
Versus

1. THE STATE OF BIHAR
2. THE UNION OF INDIA THROUGH ADDL. SOLICITOR GENERAL,
PATNA HIGH COURT PATNA Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Rajendra Narain, Sr. Adv. Mr. Akhileshwar Kumar Shrivastva. Adv.
For the Opposite Party/s :		Mr. Ashok Kumar Singh, APP
For the UOI	:	Mr. Bindhyacahal Rai, Adv.

**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

ORAL ORDER

9 04-07-2024 Heard the parties

2. The petitioner is seeking regular bail in connection with Dumariyaghat P.S. Case No. 149 of 2023, (NDPS Case Pr-Trial) for the offences punishable under Sections 20(b), (ii) (c)/25 and 29 of the NDPS Act.

3. As per allegation, the police received an information that *Ganja* was being transported towards Areraj in white-colored Scorpio Vehicle. The police party reached the informed place and saw a Scorpio Vehicle bearing Registration No. GJ12DS-4055, which was coming from the side of Khajuriya. It was stopped by the police party. The driver disclosed his name as Sanjay Kumar Shrivastava (petitioner)



and in presence of the witnesses and Magistrate, 24.250 kg *Ganja* was recovered from that vehicle.

4. Mr. Rajendra Narain, learned Senior Advocate on behalf of the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. Nothing was recovered from his possession. As a matter of fact, the petitioner was going to attend a marriage ceremony and in the way, due to ill-demand of the police officials, some hot talk took place between the informant and the police party. He has further submitted that the FIR itself shows that no sampling was done at the place of occurrence. He has also submitted that the investigating authorities submitted the charge-sheet without obtaining FSL report. He has next submitted that in Case of *Ram Babu Yadav Vs. The State of Bihar in Criminal Miscellaneous No. 21326 of 2021* a co-ordinate Bench of this Court has observed that submission of charge-sheet in absence of FSL report, merely because the Investigating Officer felt that the accused would get the benefit of default bail under Section 167(2) of the CrPC, amply reflects that the Investigating Officer was not aware of the provisions relating to NDPS Act and was completely oblivious of Section 36A(4) of the NDPS Act, and submission of charge-sheet in absence of FSL report does not



justify the incarceration of the accused.

5. On the other hand, the learned APP for the State has opposed the prayer for bail and submitted that a huge quantity of *Ganja* was recovered from possession of the petitioner and merely because non-submission of the FSL report does not make the petitioner entitled to get the privileges of bail. He has submitted further that non-submission of charge-sheet in absence of FSL report is not an erroneous charge-sheet, rather it is an incomplete charge-sheet, to which the learned counsel for the petitioner replied that the last paragraph of the case diary (paragraph no. 48) itself shows that so far as this petitioner is concerned, the investigation is complete. The Investigating Officer has specifically mentioned in paragraph no. 48 of the case diary that the investigation in respect of this petitioner is complete.

6. It appears that the investigation in respect of the petitioner is complete and charge-sheet has been submitted without the FSL report. As such, it has not been determined as yet, whether the seized article is narcotic and psychotropic substance or not. Without ascertaining the fact whether the seized material was narcotic and psychotropic substance, no body can be continued to be under incarceration for an



indefinite period. The petitioner has already completed an incarceration of more than a year.

7. Considering the above-mentioned facts and circumstances, let the petitioner above-named be released on bail on furnishing bail bonds of Rs.10,000/- (ten thousand rupees) with two sureties of the like amount each to the satisfaction of learned Session Judge-cum-Special Judge (NDPS Act), Motihari, East Champaran in connection with Dumariyaghat P.S. Case No. 149 of 2023, subject to the following conditions:-

(i) The petitioner shall cooperate in the disposal of the trial and make himself available on each and every date fixed at the trial, and if he fails to appear on two consecutive dates, the learned court below shall be at liberty to cancel his bail bond.

(ii) Before release of the petitioner, the learned court below shall verify his criminal antecedent.

(Nawneet Kumar Pandey, J)

Nirmal/HR

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