

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16906 of 2025

Arising Out of PS. Case No.-180 Year-2024 Thana- BETTIAH CITY District- West
Champaran

Faiyaz Miyan Son of Late Ijrayal Miyan Resident of Village- Inarwa Bazar,
P.s.- Inarwa, West Champaran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar, Advocate
For the Opposite Party/s : Mr. Abhay Kumar Roy, APP

CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL ORDER

8 02-07-2025 Heard learned counsel for the petitioner and learned
APP for the State.

2. The petitioner seeks bail in a case registered for the
alleged offences under Sections 414 IPC and Sections 8, 20(b)
(ii)(c), 22(c) and 23(c) of the NDPS Act.

3. As per the prosecution case, upon secret
information, a raid was conducted by the NCB. Two
motorcycles were standing besides the road. On seeing police,
both persons started fleeing. They were apprehended and from
the motorcycle of this petitioner a total of 15.636 kg of Charas
was recovered.

4. Learned counsel for the petitioner submits that the
petitioner is innocent and has falsely been implicated in this



case. The petitioner is neither the owner nor driver of the seized motorcycle and has been implicated in this case due to village politics. Learned counsel for the petitioner has further submitted that the charge sheet has been submitted without F.S.L. report which is an incomplete charge sheet and it is not clear that whether the seized article is narcotics or something else and as such the petitioner is entitled for default bail u/s 167(2) Cr.P.C. Learned counsel has also submitted that the Hon'ble Supreme Court in the case of **Uday Mohanlal Acharya vs. State of Maharashtra** reported in **(2001) 5 SCC 453** has held that the default bail is a right which cannot be denied to the petitioner. Learned counsel for the petitioner has also relied upon a judgment of the Hon'ble Patna High Court in the case of **Rampravesh Diswa vs. State of Bihar** reported in **[2024 (1) BLJ 776]** more particularly para 9 of the said judgment which is quoted herein below :

“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 [**: 2022 (1) BLJ 71**]. 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 or 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"

5. Learned counsel for the petitioner has next relied upon a judgment of the Hon'ble Patna High Court in the case of **Baharan Ali vs. the State of Bihar** passed in **Criminal Revision No. 276 of 2018** more particularly para 17 and 18 of the said judgment which are quoted herein below :

“17. The Three-Judge Bench of the Supreme Court (Hon'ble Mr. Justice B.N. Agrawal dissenting), in case of **Uday Mohanlal Acharya** (supra), on a consideration of several other cases in that regard, viz. **Hitendra Vishnu Thakur** (supra), **Sanjay Dutt** (supra), **Dr. Bipin Shantilal Panchal vs. State of Gujrat, (1996) 1 SCC 718** and **State of M.P. vs. Rustam & Ors., 1995 Supp (3) SCC 221** etc., concluded as follows:

13. x x x x x x x x

1. Under sub-section (2) of Section 167, a Magistrate before whom an accused is produced while the police is investigating into the offence can authorise detention of the accused in such custody as the Magistrate thinks fit for a term not exceeding 15 days on the whole.



2. Under the proviso to the aforesaid sub-section (2) of Section 167, the Magistrate may authorise detention of the accused otherwise than in the custody of police for a total period not exceeding 90 days where the investigation relates to offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and 60 days where the investigation relates to any other offence.

3. On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate.

4. When an application for bail is filed by an accused for enforcement of his indefeasible right alleged to have been accrued in his favour on account of default on the part of the investigating agency in completion of the investigation within the specified period, the Magistrate/court must dispose of it forthwith, on being satisfied that in fact the accused has been in custody for the period of 90 days or 60 days, as specified



and no charge-sheet has been filed by the investigating agency. Such prompt action on the part of the Magistrate/court will not enable the prosecution to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of the default on the part of the investigating agency in completing the investigation within the period stipulated.

5. If the accused is unable to furnish the bail as directed by the Magistrate, then on a conjoint reading of Explanation I and the proviso to sub- section (2) of Section 167, the continued custody of the accused even beyond the specified period in para (a) will not be unauthorised, and therefore, if during that period the investigation is complete and the charge-sheet is filed then so-called indefeasible right of the accused would stand extinguished.

6. The expression “if not already availed of” used by this Court in Sanjay Dutt case must be understood to mean when the accused filed an application and is prepared to offer bail on being directed. In other words, on expiry of the period specified in para (a) of the proviso to sub-section (2) of Section 167 if the accused files an application for bail and offers also to furnish the bail on being directed, then it has to be



held that the accused has availed of his indefeasible right even though the court has not considered the said application and has not indicated the terms and conditions of bail, and the accused has not furnished the same.

(emphasis provided)

18. The Bench recorded further in the same paragraph of the judgment as follows:-

“With the aforesaid interpretation of the expression “availed of” if the charge-sheet is filed subsequent to the availing of the indefeasible right by the accused then that right would not stand frustrated or extinguished, necessarily therefore, if an accused entitled to be released on bail by application of the proviso to sub-section (2) of Section 167, makes the application before the Magistrate, but the Magistrate erroneously refuses the same and rejects the application and then the accused moves the higher forum and while the matter remains pending before the higher forum for consideration, a charge-sheet is filed, the so-called indefeasible right of the accused would not stand extinguished thereby, and on the other hand, the accused has to be released on bail. Such an accused, who thus is entitled to be released on bail in enforcement of his



indefeasible right will, however, have to be produced before the Magistrate on a charge-sheet being filed in accordance with Section 209 and the Magistrate must deal with him in the matter of remand to custody subject to the provisions of the Code relating to bail and subject to the provisions of cancellation of bail, already granted in accordance with the law laid down by this Court in the case of Mohd. Iqbal v. State of Maharashtra.”

(emphasis provided)

Applying the principles laid down, the Supreme Court was of the view that the accused in that case had availed of his right on 17.08.2000 by filing an application for being released on bail and offering therein to furnish bail in question and hence was entitled to be released on statutory bail. The order of the Division Bench of Bombay High Court was set-aside and it was directed that the accused be released on bail, but on such terms and conditions which would be to the satisfaction of the learned Magistrate, who would further be entitled to deal with the accused in accordance with law since the charge-sheet had been submitted.”

6. Lastly, it has been submitted that the petitioner is in



custody since 20.04.2024 and is having clean antecedent.

7. Learned counsel for the NCB vehemently opposed the prayer for bail and has submitted that the petitioner was alleged to be found in possession of Charas like substance total weight 15.636 kg and charge sheet has been submitted against him on 08.10.2024, though without FSL report.

8. Having regard to the facts and circumstances and submissions made on behalf of the parties and considering the fact that the charge sheet has been submitted without FSL report and petitioner should not have been kept in judicial custody once incomplete charge sheet was filed without FSL report, the same amounts to no charge sheet in the eye of law, the petitioner above named is directed to 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 learned court below/concerned Court in connection with Bettiah Town P.S. Case No. 180 of 2024 subject to the following conditions:

- (i) One of the bailors of the petitioner shall be his close relative.
- (ii) The petitioner shall remain physically present in Court on each date of the trial.
- (iii) In case of absence on two consecutive dates or



in violation of the terms of the bail, the bail bond of the petitioner will be liable to be cancelled by the court concerned.

(iii) The learned Court below shall verify the criminal antecedent of the petitioner and in case at any stage it is found that the petitioner has concealed his criminal antecedents, the court below shall take step for cancellation of bail bond of the petitioner. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

9. It is made clear that the observations, if any, made in this order, shall be of no bearing during the trial.

(Sourendra Pandey, J)

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