

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17367 of 2025

Arising Out of PS. Case No.-106 Year-2012 Thana- CUSTOM (GOVERNMENT
OFFICIAL) District- East Champaran

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Bhikhari Sah @ Bhikhari Prasad Son of Late Kishun Sah Resident of village-
Ucheedhi (Uchidih Dhanhar Dihuli Panchayat) Panchayat- Hanerdevi P.S.-
Palanwa, District- East Champaran

... .. Petitioner

Versus

1. The State of Bihar
2. Union of India Through its office of The Assistant Commissioner of Custom
(Prev) Division Motihari

... .. Opposite Party

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Appearance :

For the Petitioner/s :	Mr.Ajay Kumar Singh, Advocate
For the Opposite Party/s :	Mr.Vinod Shanker Modi, APP
	Mr.Sriram Krishna, Sr.SC (Custom)
	Mr.Prabhat Kr. Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

6 20-08-2025 Heard Mr. Ajay Kumar Singh, learned counsel

appearing on behalf of the petitioner and Mr. Sriram Krishna,

learned senior standing counsel appearing on behalf of the

Department of Custom.

2. The accused/petitioner seeks bail in connection

with N.D.P.S. Case No. 88 of 2012 (CIS No. 101/2014)

arising out of C. No. VIII (10) 106/Seiz/Cus/MTH/12-13

registered for the offences under Sections 20(b)(ii)(c), 29,

23(c) and 27(a) of the N.D.P.S. Act.

3. The accused/petitioner is not named in the First

Information Report and is in custody since 07.12.2024.



4. As per FIR, on police raid, 59.9 kg. of Ganja was recovered from one Chaff house/hut located in village of petitioner and during said raid, Bhikhari Sah (petitioner) was leading the antisocial elements who were throwing stones and bricks on police party.

5. It is submitted by learned counsel appearing on behalf of the petitioner that during entire investigation nothing transpired that Chaff hut in issue from where alleged contraband/Ganja was said to be recovered, is connected in any manner with this petitioner and, merely on the basis of allegation as some unknown villagers were shouting by taking name of this petitioner to protest the police raid saying that “*Bhikhari Chacha custom walo ko maro*” petitioner implicated with this case.

6. It is submitted that with this much materials, it cannot be said that petitioner was under culpable mental state *qua* possession of contraband/Ganja and, therefore, rigours of Section 37 of the N.D.P.S. Act is not appears applicable.

7. Learned counsel further pointed out that the occurrence is of the year 2012, but when police repeatedly



made attempt to arrest the petitioner, thereafter petitioner on his own surrendered before the learned trial court on 07.12.2024, and since then he is in custody.

8. It is submitted that at best the allegation may import the ingredients of preventing police officials from discharging their duties, but with available allegation, petitioner cannot be implicated with possession of recovery of contraband/Ganja.

9. It is submitted that one of the reasons of false implication is that petitioner was also found involved in one case of Arms Act, wherein he is on bail. While concluding argument, investigation of this case is already completed, charge-sheet has been submitted and as such, there is no chance of tampering with the evidence.

10. Mr. Sriram Krishna, learned senior standing counsel appearing for the Department of Custom, could not disputed the factual submission that Chaff house does not belongs to this petitioner. It is submitted that on the basis of best belief, it was said that hut in issue was of this petitioner and on the basis of best belief, he was prosecuted. In support



of his submission, paragraph '7' of the counter affidavit has been referred. Admittedly, the prosecution is based upon best belief not on reasonable belief and, therefore, *prima facie* the present case is not the case as to import rigours of section 37 of the N.D.P.S. Act.

11. In view of aforesaid factual submission and by taking note of the fact as *prima facie* place of recovery not appears connected with this petitioner as per investigation and counter affidavit, as submitted by the Department of Custom, which is available on the record, coupled with the fact that petitioner remains in custody since 07.12.2024, where investigation of this case is already completed, accordingly, above-named petitioner is directed to be released on bail, furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand only) with two sureties of the like amount each to the satisfaction of learned Exclusive Special Judge - 1st, N.D.P.S. Act, East Champaran at Motihari, in connection with N.D.P.S. Case No. 88 of 2012 (CIS No. 101/2014) arising out of C. No. VIII (10) 106/Seiz/Cus/MTH/12-13, subject to the condition as laid down under Section 437(3)



Cr.P.C/Section 480(3) of the Bhartiya Nagarik Suraksha
Sanhita (in short “B.N.S.S.”) with further condition:

- (i) That petitioner shall not made any attempt to delay trial, failing so, the State/informant shall be at liberty to move before the Trial Court itself for the cancellation of bail bond of the petitioner, which shall be decided by trial court itself after giving opportunity of hearing to the petitioner.
- (ii) Accused/Petitioner shall physically present on each and every date before the Trial Court till conclusion of the trial and exemption from physical appearance be allowed by the Trial Court, only on medical ground of the petitioner duly supported by the documents.

(Chandra Shekhar Jha, J)

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