

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.30957 of 2025

Arising Out of PS. Case No.-100 Year-2025 Thana- PATLIPUTRA District- Patna

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Ganesh Kumar Son of Shivjee Rai @ Shivji Ray Resident Of Nehru Nagar,
Harijan Colony, Behind Rajkiya Madhya Vidyalaya, PS -Patliputra, District
-Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rakesh Singh, Advocate

For the Opposite Party/s : Mrs. Asha Devi, APP

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CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL ORDER

2 21-05-2025 Heard learned counsel for the petitioner and learned
APP for the State.

2. The petitioner has prayed for regular bail in a case registered for the offence punishable under sections 30(a), 30(c) and 30(d) of the Bihar Prohibition and Excise Act.

3. The case of the prosecution is that altogether 2200 kg of *Bhaang* like substance was recovered from the possession of this petitioner.

4. Learned counsel for the petitioner submits that the petitioner is innocent and has committed no offence. He has falsely been implicated in this case. He has got no criminal antecedent as mentioned in para-3 of the bail petition. He is languishing in judicial custody since 07.03.2025. Learned



counsel for the petitioner has submitted that in this case, charge sheet has been filed which has been annexed by supplementary affidavit. It has also been submitted that from perusal of the charge sheet, it will transpire that charge sheet has been filed without FSL Report. Though, it is written in the charge sheet that the alleged *bhang* has been sent to the FSL for examination but the charge sheet has been filed without the FSL Report. Learned counsel for the petitioner has brought to the notice the judgment of learned co-ordinate Bench passed in Cr. Misc. No. 21326 of 2021 wherein the learned co-ordinate Bench has held which is as under for ready reference:-

The learned counsel for the petitioner has drawn the attention of the Court to order dated 30.11.2018 in Cr. Revision no. 4659 of 2015 (O&M) (Ajit Singh alias Jeeta and Anr.) and analogous cases passed by the Hon'ble Punjab and Haryana High Court (herein after referred as the Court) wherein the Hon'ble Division Bench of the Court based on the question framed by the learned Single Judge that:

(i) 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 absence of any extension of time under Section 36A(4) of the N.D.P.S. Act, the accused is entitled to bail under Section 167(2) Cr.P.C and

(ii) If the reply is in the affirmative, then what is the position regarding commonly used substance like opium and poppy husk etc., which can be easily identified by the police officer from visual inspection, smell or taste was called upon to answer whether the presentation of report under



Section 173(2) Cr.P.C. by the police without the report of chemical examiner/FSL amounts to incomplete challan and in absence of any extension of time under Section 36A(4) of the N.D.P.S. Act, the accused is entitled to bail under Section 167(2) Cr.P.C.

The learned counsel for the petitioner submits that the Hon'ble Division Bench of the Court after considering the provisions of the N.D.P.S. Act and Cr.P.C. and considering various orders of the Court and judgment of the Hon'ble Supreme Court held that the report of F.S.L. with regard to the nature of the recovered substance would go to the root of the matter and, therefore, challan filed without F.S.L. report with regard to the nature of the substance would be an incomplete challan and would not satisfy the requirement envisaged under Section 167(2) Cr.P.C. The accused, in such circumstances, would be entitled to be released on default bail.

The learned counsel for the petitioner after making his submission draws the attention of this Court to the relevant paragraph of the judgment dated 30.11.2018. The relevant extracts of the judgment is reproduced below:-

“With respect to the question posed by the learned Single Judge regarding some of the contrabands being identifiable through naked eye, inspection based on experience and knowledge, would be a great fallacy and we would respectfully state that it would be grossly unsafe to rely upon such an opinion based on naked eye inspection backed by experience or knowledge to arrive at a prima facie opinion of the commission of an offence to submit an accused to the rigors of trial by the Magistrate in the exercise of its powers under Section 190 Cr.P.C.

The only way that it can be done is to establish the nature of contraband on the basis of the Chemical Examiner's report and for this, the



Chemical Examiner's report assumes an immense significance for the trial Court, to formulate an opinion as the very cognizance of an offence would depend on it. Non-inclusion of the Chemical Examiner's opinion in the report under Section 173 Cr.P.C. would expose the accused to unfounded dangers imperiling and endangering his liberty since the provisions of the N.D.P.S. Act in its applicability to a trial and conclusion are stringent in consequence.

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.

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.

It is for this reason that we would unhesitatingly conclude that 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 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."

5. Learned counsel for the petitioner has also brought to the notice the order of this Court wherein this Court had relied upon the judgment of the co-ordinate Bench passed in



above Cr. Misc. No. i.e., 21326 of 2021.

6. Learned APP appearing for the State has though opposed the prayer of regular bail but has admitted that the charge sheet has been filed without FSL Report.

7. Having heard learned counsel for the parties and considering the facts and circumstances of the case, this court is inclined to enlarge the petitioner on bail. The above named petitioner is directed to be released on bail in connection with Patliputra P.S. Case No. 100 of 2025 on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge Excise, First, Patna.

(Ashok Kumar Pandey, J)

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