

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38966 of 2025

Arising Out of PS. Case No.-499 Year-2024 Thana- SIMRI BAKHTIYARPUR District-
Saharsa

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Pandav Sah S/o- Late Bijendra Sah @ Late Vijendra Sah Village- Tariyama
W.No-6, P.S.- Simri Bakhtiyarpur Dist- Saharsa Petitioner/s
Versus
The State of Bihar Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. N.K. Agrawal, Sr. Advocate
Mr. Amarnath Jha, Advocate
Mr. Kumar Rajdeep, Advocate
For the Opposite Party/s : Mr. Rajendra Singh Shastri, APP

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CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL ORDER

3 03-09-2025 Heard learned Senior counsel for the petitioner and
Mr. Rajendra Singh Shastri, learned APP for the State.

2. The petitioner has prayed for regular bail in a case registered for the offence punishable under Sections 8 and 20(B)iiC of the NDPS Act and under Section 25(1-B)a and 26 of the Arms Act.

3. The case of the prosecution is that from the house of the petitioner altogether 36.1 kg of *ganja* like material was recovered from the house of the petitioner.

4. Learned Senior counsel for the petitioner has submitted that in this case charge-sheet has been filed without the FSL report which is apparent from Paragraph '76' of the case diary. It is clear that the I.O. has recorded that FSL report is not received. The FSL report is also on the record which is received in the trial court on 09.05.2025. Learned Senior counsel for the petitioner has further submitted that as the FSL



report is not available the case of the prosecution is based on the presumption that the seized material was the contraband.

5. This issue has been discussed by the learned Co-ordinate Bench of this Court in Cr. Misc. No. 65898 of 2023, wherein the Co-ordinate Bench has opined that from reading of Section 36(a) sub-clause 4 of the NDPS Act, it appears that in the case of offence punishable under Section 19 or Section 24 or Section 27(a) 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 person is entitled for default bail. The proviso to Section 37(a) speaks that 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 that progress report of the investigation and gives specific reasons for detention of the accused beyond the said period of 180 days. In the present case, the Additional Public Prosecutor has not filed any application for extension of period of the charge-sheet and the charge-sheet as per the contention of the petitioners have been filed without FSL report.

6. In the case of **Rabi Prakash vs. State of Odisha**, Hon'ble Supreme Court has held that the prolonged



incarceration generally militate against the most precious fundamental right guaranteed under Article 21 of the Constitution of India and in such situation, the conditional liberty must override the statutory embargo created under Section 37 sub-clause 1(b) of the NDPS Act. The charge-sheet filed without FSL report does not ipso facto creates any embargo against the fundamental right of a citizen enshrined in Article 21 of the Indian Constitution.

7. Learned Additional Public Prosecutor for the State has vehemently opposed the prayer of bail to the petitioner.

8. 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 Special Case under NDPS Act arising out of Simri Bakhtiyarpur P.S. Case No. 499 of 2024 on furnishing bail bond of Rs.10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Sessions Judge-cum-Special Judge, Saharsa.

(Ashok Kumar Pandey, J)

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