

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41808 of 2025

Arising Out of PS. Case No.-446 Year-2024 Thana- RAXAUL District- East Champaran

Bhola @ Bhola Sah S/o Shivjee Sah @ Shivjee Prasad R/o Vill. - Naga Road,
Kali Mandir Raxaul, Ps - Raxaul, Distt.- East Champaran. Petitioner/s
Versus

The State of Bihar. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 41939 of 2025

Arising Out of PS. Case No.-446 Year-2024 Thana- RAXAUL District- East Champaran

Manoj Kumar @ Manoj Gupta S/O Dayashankar Prasad Resident of Village-
Kali Mandir Raxaul, P.S- Raxaul, District- East Champaran.... .. Petitioner/s
Versus

The State of Bihar. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 41808 of 2025)

For the Petitioner/s : Mr.Abneesh Kumar, Advocate

For the Opposite Party/s : Mr. Navin Kumar Pandey, APP

(In CRIMINAL MISCELLANEOUS No. 41939 of 2025)

For the Petitioner/s : Mr.Abhishek Kumar, Advocate

For the Opposite Party/s : Mr. Navin Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

3 09-10-2025

Cr. Misc. No. 41808 of 2025

Heard learned counsel appearing on behalf of the
petitioner and learned APP appearing on behalf of the State.

2. The petitioner seeks bail in connection with NDPS
Case No. 54/2025 arising out of Raxaul P.S. Case No. 446/2024,
registered for the offence under Sections 132 of the BNS, 2023
and 21(b) 22(c), 23 & 29 of the NDPS Act.

3. The accused/petitioner is named in the F.I.R. and is
in custody since 22.04.2025.

4. The allegation against the petitioner is to have in



possession of 1 Kg and 342 grams of charas alongwith 16 pieces of 100 ml. bottle of Corex cough syrup alongwith other co-accused persons.

5. Learned Counsel appearing on behalf of the petitioner submitted that the alleged charas was recovered under damaged bus, which was parked in abandoned condition. It is submitted that seeing police, two persons were started fleeing away near to said bus, who were apprehended after a short chase and disclosed their name as Vicky Kumar and Aditya Kumar. It is pointed out that upon their disclosure, the name of this petitioner transpired who disclosed to the extent that they worked together with this petitioner without disclosing any nature of work. It is submitted that as the contraband was not recovered from physical possession of this petitioner, therefore, merely on the basis of disclosure culpable mental state of the petitioner in view of Section 35 of the NDPS Act cannot be gathered. It is pointed out that in absence of culpable mental state, the application of rigours as available under Section 37 of the NDPS Act also not appears applicable in present factual scenario.

6. Besides aforesaid, it is pointed out by learned counsel that the charge-sheet in this matter was submitted without obtaining FSL report *qua* contraband whether same was charas or



not. It is submitted that without obtaining FSL report, incomplete charge-sheet was submitted just to deprive the petitioner from getting default bail in view of Section 167 of Cr.P.C./187 of BNSS. It is pointed out that on this ground alone, petitioner is entitled for bail as for this issue the matter is pending for consideration before the Hon'ble Supreme Court. In support of his submission, learned counsel relied upon one of the order passed by Hon'ble Supreme Court as available through ***Divyas Bardewa Vs. Narcotics Control Bureau***, reported in ***2023 SCC OnLine SC 742***. It is further pointed out that co-accused Aditya Kumar @ Aditya Raj was already granted bail by this Court through Cr. Misc. No. 27360 of 2025 dated 23.07.2025.

7. A report was called for from the court concerned, which made available to this Court through letter no. 156 dated 23.08.2025 as issued from the court of learned Exclusive Special Court No. II, NDPS Act, East Champaran, Motihari, which speaks that the charge-sheet in this case has been submitted by the I.O. without FSL report.

8. Learned APP opposed the prayer of bail.

9. Considering the aforesaid factual submissions and by taking note of fact as admittedly, recovery of charas was not made from physical possession of this petitioner, where charge-sheet



against this petitioner was submitted without obtaining FSL report i.e. incomplete charge-sheet, coupled with the fact that petitioner remains in custody since 22.04.2025, accordingly, petitioner above named, is directed to be released on bail in connection with NDPS Case No. 54/2025 arising out of Raxaul P.S. Case No. 446/2024 on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Exclusive Special Judge Court No. II, NDPS, East Champaran at Motihari/concerned Court, subject to the conditions as mentioned under Section 437(3) of the Cr.P.C./Section 480(3) of BNSS.

Cr. Misc. No. 41939 of 2025

1. Heard learned counsel appearing on behalf of the petitioner and learned APP appearing on behalf of the State.
2. The petitioner seeks bail in connection with NDPS Case No. 54/2025 arising out of Raxaul P.S. Case No. 446/2024, registered for the offence under Sections 132 of the BNS, 2023 and 21(b) 22(c), 23 & 29 of the NDPS Act.
3. The accused/petitioner is named in the F.I.R. and is in custody since 25.04.2025.
4. The allegation against the petitioner is to have in possession of 1 Kg and 342 grams of charas alongwith 16 pieces



of 100 ml. bottle of Corex cough syrup alongwith other co-accused persons.

5. Learned Counsel appearing on behalf of the petitioner submitted that the alleged charas was recovered under damaged bus, which was parked in abandoned condition. It is submitted that seeing police, two persons were started fleeing away near to said bus, who were apprehended after a short chase and disclosed their name as Vicky Kumar and Aditya Kumar. It is pointed out that upon their disclosure, the name of this petitioner transpired who disclosed to the extent that they worked together with this petitioner without disclosing any nature of work. It is submitted that as the contraband was not recovered from physical possession of this petitioner, therefore, merely on the basis of disclosure culpable mental state of the petitioner in view of Section 35 of the NDPS Act cannot be gathered. It is pointed out that in absence of culpable mental state, the application of rigours as available under Section 37 of the NDPS Act also not appears applicable in present factual scenario.

6. Besides aforesaid, it is pointed out by learned counsel that the charge-sheet in this matter was submitted without obtaining FSL report *qua* contraband whether same was charas or not. It is submitted that without obtaining FSL report, incomplete



charge-sheet was submitted just to deprive the petitioner from getting default bail in view of Section 167 of Cr.P.C./187 of BNSS. It is pointed out that on this ground alone, petitioner is entitled for bail as for this issue the matter is pending for consideration before the Hon'ble Supreme Court. In support of his submission, learned counsel relied upon one of the order passed by Hon'ble Supreme Court as available through ***Divyas Bardewa Vs. Narcotics Control Bureau***, reported in ***2023 SCC OnLine SC 742***. It is further pointed out that co-accused Aditya Kumar @ Aditya Raj was already granted bail by this Court through Cr. Misc. No. 27360 of 2025 dated 23.07.2025.

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8. Learned APP opposed the prayer of bail.

9. Considering the aforesaid factual submissions and by taking note of fact as admittedly, recovery of charas was not made from physical possession of this petitioner, where charge-sheet against this petitioner was submitted without obtaining FSL report



i.e. incomplete charge-sheet, coupled with the fact that petitioner remains in custody since 25.04.2025, accordingly, petitioner above named, is directed to be released on bail in connection with NDPS Case No. 54/2025 arising out of Raxaul P.S. Case No. 446/2024 on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Exclusive Special Judge Court No. II, NDPS, East Champaran at Motihari/concerned Court, subject to the conditions as mentioned under Section 437(3) of the Cr.P.C./Section 480(3) of BNSS.

(Chandra Shekhar Jha, J)

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