

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.61362 of 2024

Arising Out of PS. Case No.-441 Year-2023 Thana- CHHATAUNI District- East Champaran

Sunita Devi, W/O Late Jaleshwar Prasad, R/O Gram Bada Pakar Dulma, P.O-
Dulma and P.S- Madhuban, Distt.- East Champaran, Bihar.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Avinash Kumar, Advocate Mr. Kuldeep Thakur, Advocate Mr. Abhishek Kumar Pandey, Advocate
For the Opposite Party/s :		Ms.Rina Sinha, APP

CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
CAV ORDER

6 07-03-2025 Heard Mr. Avinash Kumar, learned counsel for the
petitioner and Ms.Rina Sinha, learned APP for the State.

2. The petitioner has prayed for regular bail in a case registered for the offence punishable under Sections 20(b)(ii)(c) and 22 of the N.D.P.S. Act.

3. The case of the prosecution is that from the possession of this petitioner, 4 Kg 613 gram of *charas* like material was recovered.

4. Learned counsel for the petitioner submits that the petitioner is innocent and has committed no offence. She has falsely been implicated in this case. She has got no criminal antecedent. It is further submitted that the witnesses of seizure list are not the independent witnesses and from perusal of the



F.I.R., it will also transpire that the weighing scale was not proper as it has been obtained from a shop. As per the N.D.P.S. Rules, the search team has to take with them Narcotic Detection Kit and weighing scale but from perusal of the F.I.R., it will transpire that they were not having both the things.

5. It has also been submitted by learned counsel for the petitioner that in this case, the charge-sheet has been filed without *FSL* report. From perusal of the case diary, it transpires that the charge-sheet was filed on 09.03.2024. From perusal of the record, it transpires that there is a letter of S.P., East Champaran, Motihari that *FSL* report is still awaited. It has also been submitted that the body of the petitioner was searched and the provisions of Section 50 of N.D.P.S. Act were not followed. It has also been submitted that from perusal of the F.I.R. and seizure list, it is clear that the contraband which has been recovered from the possession of this petitioner is not ascertained as yet as in seizure list and F.I.R., it is mentioned as object like *charas*. Petitioner is languishing in judicial custody since 14.09.2023.

6. As far as the argument of the learned counsel regarding submission of the charge-sheet without *FSL* report is concerned, I would like to refer the order of the 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 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 Special 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 petitioner has been filed without *FSL* report.

7. In the case of **Rabi Prakash vs. the 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.

8. Learned APP appearing for the state has opposed the prayer of regular bail.

9. 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 Chatauni P.S. Case No. 441 of 2023 corresponding to N.D.P.S. Case No. 21 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 Exclusive Special Judge-I, Motihari, East Champaran.

10. Accordingly, the present bail application stands allowed.

(Ashok Kumar Pandey, J)

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Sudhanshu/-

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