

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 56218 of 2025

Arising Out of PS. Case No.-1030 Year-2025 Thana- PHULWARISHARIF District- Patna

Raja Kumar, S/O Moti Mahto, R/O- Kumhar Toli Sangatpar, Ward No.-06,
P.S.- Phulwarisharif, Distt.- Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ram Jiban Pd. Singh, Adv.

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

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

2 12-08-2025 Heard Mr. Ram Jiban Pd. Singh, learned counsel for
the petitioner and Mr. Pranav Kumar, learned APP for the State.

2. Petitioner seeks regular bail in connection with
Phulwarisharif P.S. Case No. 1030 of 2025 dated 25.06.2025
registered for the offence punishable under sections 8(c)/21(a)
of the Narcotic Drugs and Psychotropic Substances, Act, (in
short 'NDPS Act').

3. The main submissions advanced by petitioner's
counsel are that the instant matter relates to the recovery of
eight sachets allegedly containing smack-like material, which
collectively weighed 1.76 grams, including the weight of the
sachets, on an electronic weighing machine, however, without
the sachets, the weight of the contained material was only 0.32
grams, which is a very small quantity but despite this, the trial
court rejected the petitioner's prayer for regular bail in a



mechanical manner without considering the prescribed punishment for the alleged offence. It is further submitted that the petitioner has been languishing in jail since 26.06.2025, though against him there is criminal antecedent of one case but he is on bail in the said case.

4. Learned APP for the State has opposed the prayer of the petitioner.

5. Heard both the sides, perused the FIR and the trial court's order rejecting the bail prayer of the petitioner. Section 37(1) of the NDPS Act says that every offence punishable under NDPS Act shall be cognizable, though upon first reading of the heading of the said section, one may get an impression that all the offences under the NDPS Act are non-bailable, however, on reading the language of section 37 of NDPS Act, it becomes clear that in clause (a) to subsection (1), the legislature has unequivocally declared that notwithstanding anything contained in the code of criminal procedure, every offence punishable under this act shall be cognizable. If this provision would not have been there, certain offences under the NDPS Act punishable with imprisonment for less than three years or with fine, would be non-cognizable in view of Part II of the First Schedule of the BNSS but they are made cognizable because of the specific provision in clause (a) of the section 37(1) of the



NDPS Act. If the heading of section 37 is kept aside for a moment, nowhere section 37 specifically declares that every offence punishable under the NDPS Act shall be non-bailable. As such, the offences which are punishable with imprisonment for less than three years under the NDPS Act must be treated as bailable in view of the Part II of the First Schedule of the BNSS except the offences which have been specifically made non-bailable irrespective of the quantum of punishment. In this regard, I would like to refer to the observations made by the Hon'ble Punjab and Haryana High Court in the case of **Kuldeep Singh alias Keepa vs. State of Punjab** in **CRM-M-60671-2024** and the relevant paragraphs Nos. 80, 81, 82 and 83 of the said judgment are reproduced as under : -

“80. In the absence of explicit legislative clarification, the only viable recourse available to the judiciary is an interpretative reliance on Schedule II of the BNSS 2023, which delineates the classification of offences based on the prescribed sentence. As per the final column of this Schedule, offences carrying a sentence of less than three years are categorically designated as non-cognizable and bailable. However, within the framework of the NDPS Act, offences are explicitly classified as cognizable in the corresponding column of the Second Schedule. Consequently, the designation of 'non-cognizable' cannot be extrapolated to NDPS offences, given that the Act operates as a Special Legislation with an overriding effect.

81. Nevertheless, while the NDPS Act



unequivocally declares such offences as cognizable, it remains silent on their bailability. In light of this legislative omission, the intent of the legislature must be discerned through Schedule II of the BNSS 2023, which unambiguously stipulates that all offenses carrying a sentence of less than three years shall be treated as bailable. Since the maximum sentence that may be imposed for an offense involving a small quantity under the NDPS Act is one year, it logically follows that such an offense must be construed as bailable under the prevailing legal framework.

82. Thus, in light of the judicial precedents cited above and the foregoing analysis, the general rule of incarceration should be viewed as an exception in the context of offences involving small quantities under the NDPS Act. Where the statutory framework does not expressly mandate stringent bail restrictions, judicial interpretation must align with the principles of proportionality and legislative intent, ensuring that minor infractions are not met with unduly harsh consequences.

83. Consequently, when the contravention under the NDPS Act involves 'Small Quantity', the offences are Bailable'. When the drug quantity falls in small category, the offence is bailable by operation of BNSS, 2023. Thus, any person accused of such an offence is entitled to bail without filing any bail application, subject to furnishing the requisite bail bonds."

I would also like to refer to the observation made by
Hon'ble Division Bench of the Delhi High Court in the case of
Minnie Khadim Ali Kuhn vs. State NCT of Delhi & Ors.



reported in **2012 SCC OnLine Del 2657** and the relevant paragraph No. 19 of this judgment is being reproduced as under :-

“19. This court, in view of the above analysis, is therefore, of the opinion that except in respect of offences specifically enumerated under Section 37, i.e. offences punishable under Sections 19, 24 and 27, and those cases involving commercial quantities, the normal law, i.e. the Criminal Procedure Code is applicable whenever the question of bail arises. Thus, if the offences are punishable like in the case of possession of small quantities of the concerned substance or drug, under Section 21 and 22- the suspect or accused is entitled to bail, and if she or he is prepared to give, has to be granted bail, in terms of Section 436 of the Criminal Procedure Code, without the necessity of his (or her) seeking it in the Court. This Court hereby directs the Police Commissioner to issue necessary guidelines and instructions to all police officials bringing to their notice the effect of this judgment, so that they are suitably instructed in future cases, wherever offences are bailable, to release the suspects wherever bail is offered in terms of Section 436, Cr. PC, read with Item 3 of Part II to the First Schedule of the Act, and any other class of offences deemed bailable by the Code.

The instant matter relates to the recovery of 1.76 gm smack like material, including the weight of seized sachets, from the possession of the petitioner and the same comes in the purview of small quantity for which the maximum punishment



is rigorous imprisonment for a term which may extend to one year or with fine which may extend to Rs. 10,000/- or both. So, in such a situation, the alleged wrong of the petitioner punishable under section 21(a) of the NDPS Act comes in the purview of bailable offence and the petitioner ought to have been released on bail in view of the provisions of section 478 of BNSS, even then, the trial court without considering this aspect, rejected the petitioner's bail prayer in mechanical manner, which frustrates the spirit of the NDPS and BNSS law. Accordingly, the prayer of the petitioner is allowed. Let the petitioner named-above be released on bail on furnishing bail bond of Rs.20,000/-(Rupees Twenty Thousand) with two sureties of the like amount each to the satisfaction of the court concerned in connection with Phulwarisharif P.S. Case No. 1030 of 2025.

6. Let this order's copy be sent to the Director General of Police, Bihar for making the police officials aware of the bailability and non-bailability of the offences punishable under NDPS Act.

(Shailendra Singh, J)

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