

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.69263 of 2025

Arising Out of PS. Case No.-359 Year-2024 Thana- ALAMGANJ District- Patna

Rahul Kumar Son of Bal Ram Prasad Resident of Village- Guljarbag Gumti,
Police Station- Alamganj, District- Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

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

For the Opposite Party/s : Mr. B.N. Pandey, APP

CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL ORDER

3 31-10-2025 Heard learned counsel for the petitioner and Mr. B.N. Pandey, learned APP for the State.

2. Learned counsel for the petitioner has submitted that earlier his prayer for bail was rejected vide order dated 04.02.2025 with an observation that the petitioner may renew his prayer for bail after six months.

3. Learned counsel for the petitioner has submitted that a report from the trial court has also been called for regarding the stage of trial and from perusal of the report of the trial court it is clear that only charges have been framed against the petitioner.

4. The petitioner has prayed for regular bail in a case registered for the offence punishable under Sections 8, 20 and 22 of the NDPS Act.

5. The case of the prosecution in short is that from the



joint residence of the petitioner altogether 815.82 grams of *smack* was recovered.

6. Learned counsel for the petitioner has submitted that without the FSL report, chargesheet has been filed. In this regard, perused the chargesheet and FSL report and from perusal of the chargesheet and FSL report it is clear that the chargesheet has been filed much after the FSL report. The petitioner is in custody since 30.04.2024.

7. 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.

8. 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.

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

10. Having heard learned counsel for the parties and considering the facts and circumstances of the case and the fact that the trial has still not begun, this court is inclined to enlarge the petitioner on bail. The above named petitioner is directed to



be released on bail in connection with Alamganj P.S. Case No. 359 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/Special Judge(NDPS), Patna.

(Ashok Kumar Pandey, J)

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